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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA

REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Volume IV

[Plenary documents of particular relevance
to Special Commission 4]

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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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8 September 1983

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Preparatory Commission for the International
Sea-Bed Authority and for the International
Tribunal for the Law of the Sea
Resumed first session
Kingston, Jamaica
15 August-9 September 1983

SUGGESTIONS BY THE CHAIRMAN ADOPTED AT THE 5th PLENARY MEETING OF THE COMMISSION ON 8 SEPTEMBER 1983

1. At its 5th plenary meeting on 8 September 1983, the Preparatory Commission adopted the following suggestions by the Chairman:

(a) Structure of the Preparatory Commission, functions of the organs and bodies of the Preparatory Commission, officers and venue (annex I);

(b) Procedures and guidelines for registration of pioneer investors under resolution II (annex II);

(c) Rules of procedure on decision-making (annex III).

2. Before these suggestions were adopted, the Chairman made the following statement:

It is the understanding of the Preparatory Commission that, consistent with the mandate contained in resolution II relating to pioneer investment, the elaboration and adoption of rules, regulations and procedures for the implementation of resolution II shall be considered as a matter of high priority by the Preparatory Commission at its next session.

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ANNEX I

I. STRUCTURE OF THE PREPARATORY COMMISSION

1. The Preparatory Commission shall consist of the Plenary as the principal organ and shall establish as its main organs the following Special Commissions of equal status:

   (a) a Special Commission on the problems that could be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area; this Commission will be entrusted with the functions referred to in paragraphs 5 (i) and 9 of resolution I;

   (b) a Special Commission for the Enterprise for the adopti of all measures necessary for the early entry into effective operation of the Enterprise; this Commission will be entrusted with the functions referred to in paragraph 8 of resolution I and paragraph 12 of resolution II;

   (c) a Special Commission for the preparation of rules, regulations and procedures for the exploration and exploitation of the Area (sea-bed mining code) [resolution I, paragraph 5 (g)];

   (d) a Special Commission for the Tribunal to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea [resolution I, paragraph 10];

2. The Preparatory Commission may establish such other subsidiary bodies as necessary for the effective exercise of its functions, and shall determine their composition and competence.

II. FUNCTIONS OF THE PREPARATORY COMMISSION IN PLENARY

(a) The preparation of rules, regulations and procedures on the administrative, financial and budgetary matters pertaining to the various organs of the Authority [paragraph 5 (g) of resolution I];

(b) the implementation of resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules [paragraph 5 (h) of resolution I];

(c) the preparation, consideration and adoption of the final report referred to in paragraph 11 of resolution I incorporating therein the results of deliberations, on all matters within its exclusive competence and on all matters within the competence of its Special Commissions and other subsidiary bodies as contained in the reports submitted to it by them for the presentation of the final report by the Chairman to the first session of the Assembly of the International Sea-Bed Authority;

(d) the general conduct of business; the co-ordination of work of the organs and subsidiary bodies; and upon the recommendation of the General Committee, all questions of organization of work;

(e) the presentation of the report of the Preparatory Commission through its Chairman on the arrangements for the establishment of the International Tribunal for the Law of the Sea to the meeting of States Parties convened for the purpose;

(f) all matters not specifically assigned to the Special Commissions or other subsidiary bodies.

III. FUNCTIONS OF THE ORGANS AND BODIES OF THE PREPARATORY COMMISSI.

1. The General Committee shall act on behalf of the Preparatory Commission as the executive organ for the administration of resolution II.

2. The General Committee shall be the organ responsible for making recommendations to the Plenary on all questions of organization of work.

3. The Special Commissions shall be entrusted with the functions described under item I, 1(a) through (d) above.

4. The functions of any other subsidiary body shall be defined by the Commission upon its establishment.

IV. OFFICERS

(a) The Preparatory Commission shall elect a Chairman, 14 Vice-Chairmen and a Rapporteur-General as well as a Chairman and four (4) Vice-Chairmen of each Special Commission, and such other officers as it may decide, from among the representatives of members;

(b) In the election of officers, due regard shall be taken of the practice of the United Nations General Assembly and of the Third United Nations Conference on the Law of the Sea so that each regional group is represented by at least one of its members in each of the organs and that there is an equitable geographical distribution in the membership of the General Committee to ensure its representative character;

(c) (i) There shall be a General Committee consisting of the Chairmen and the other officers of the Plena and of the Special Commissions. The Chairman of the Preparatory Commission or, in his absence, a Vice-Chairman designated by him, shall serve as Chairman of the General Committee;

(ii) If the Chairman or any other member of the General Committee finds it necessary to be absent during a meeting of the General Committee he may designate a member of his delegation to sit and vote in the Committee.

V. VENUE

1. There shall be one regular session of the Preparatory Commission a year which shall be held at the seat of the Authority and shall last for a period of four (4) weeks. There shall also be one session of the Working Groups /Plenary, Special Commissions and the subsidiary bodies/ of the Preparatory Commission a year which shall also last for a period of four (4) weeks. The Preparatory Commission shall decide whether the Working Groups will meet in Kingston, New York or Geneva.

2. In 1984 the Preparatory Commission will hold its regular session in Kingston during spring and a session for the Working Groups in New York or Geneva during summer. The venue for the latter will be determined at the meeting of the Preparatory Commission.

3. The Preparatory Commission may at any time decide to hold an additional session for itself or for its Working Groups to hold additional meetings.

ANNEX II

PROCEDURES AND GUIDELINES FOR REGISTRATION OF PIONEER INVESTORS UNDER RESOLUTION II

APPLICATION FOR REGISTRATION AS A PIONEER INVESTOR

A. Submission of the Application

The application shall be addressed to the Chairman of the Preparatory Commission and submitted to the Secretary-General by a certifying State or its designated Authority in writing in one of the official languages of the United Nations.

B. Recording of the application

The Secretary-General shall:

(a) record the application

(b) acknowledge the receip of the application

C. Communication of the recording

The Secretary-General shall circulate the particulars recorded to participants of the Preparatory Commission.

D. Transmission of the application for examination

The Secretary-General shall promptly notify the Chairman of the Preparatory Commission of the receipt of the application. Within 15 days of the receipt of the application, the Chairman will convene the General Committee to examine the application.

/ The following rules will apply to stages B, C and D above pending the adoption of rules of procedure:

1. Pending the adoption of the rules of procedure for the consideration and registration of applications of pioneer investors under resolution II of the Third United Nations Conference on the Law of the Sea, applications for registration submitted to the Preparatory Commission shall be recorded by the Secretary-General or his Special Representative

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upon receipt. The particulars recorded shall contain the date of receipt of the application and a list of any attachments or annexes thereto, the name of the certifying State, the date on which it has signed the Convention and the name of the entity making the application.

2. The Secretary-General or his Special Representative shall place the application and the attachments and annexes thereto in safe custody until required by the Preparatory Commission and shall duly acknowledge receipt of the application. The Secretary-General or his Special Representative shall promptly notify the Chairman of the Preparatory Commission of the receipt of the application and circulate the particulars recorded to all participants of the Preparatory Commission. _/

CONTENT OF THE APPLICATION

A. The application shall contain the items listed below:

(a) identity of the applicant and its compliance with the relevant requirements:

If the applicant is identified under para. 1(a) (i)
- identification as to whether an applicant is a State, State enterpri or a natural or juridical person, it nationality or whether it is effectively controlled by the certifying State or its nationals;
- confirmation that the certifying State has signed the Convention;

If the applicant is identified under para. 1(a) (ii)
- indication as to whether the entity has the nationality of or is effectively controlled by one or more of the States mentioned;
- confirmation that the certifying State has signed the Convention;

/...

If the applicant is identified under para. 1(a) (iii)
- indication as to whether the applicant is a State, State enterprise or a natural or juridical person, its nationality or whether it is effectively controlled by a developing State or States;
- confirmation that the certifying State has signed the Convention;

(b) statement, in the appropriate case, confirming the exercise of effective control over the applicant by the certifying State;

(c) information on the location and its co-ordinates delimiting the application area
- location of the area through submission of geographical co-ordinates;
- calculation of the total size of the application area (not necessarily a single continuous area);
- division of the total application area into two parts of equal estimated commercial value;

(d) data used to determine commercial value of the application area, inter alia:
- testing in connection with prospecting;
- mapping: mapping of parameters such as sea-bed morphology, bathymetry, nodule population, etc.;
- density of polymetallic nodules;
- metal content or chemical analyses;

(e) assurances by the certifying State concerned as to the absence or the resolution of conflict concerning overlapping areas in accordance with paragraph 5(a) and (c);

(f) statement or certification, as appropriate, of the applicant's expenditures in compliance with the following requirements:

at least US$30 million (US dollars calculated in constant dollars relative to 1982) of which at least 10 percent has been expended in the location, survey and evaluation of the area referred to in paragraph 1(a):

- prior to 1 January 1983 in the case of an applicant under paragraph 1(a)(i) or paragraph 1(a)(ii), and prior to 1 January 1985 in the case of an applicant under paragraph 1(a)(iii)

Decisions will have to be made as to the form and the content of the statement or the certificate of expenditures of US$30 million.

B. Payment of US$250,000 (attention is drawn to Annex III, Article 13, paragraphs 12 and 13 relating to constant dollars at a given base year). Decisions will have to be made as to time, mode and disposition of payment.

III. EXAMINATION OF THE APPLICATION

A. The content of the application shall be examined by the General Committee.

B. A technical body will be established to assist the General Committee in the examination of the application.

C. If an application is found not to be in conformity with applicable rules, the prospective certifying State concerned may submit additional information on the basis of which the application shall be reconsidered.

IV. ALLOCATION OF AREAS

Within 45 days of determination through this examination that data required by paragraph 3(a) have been received, the allocation will be made.

/...

V. CONFIDENTIALITY OF DATA AND INFORMATION

Rules and measures to ensure strict confidentiality of data and information involved in I - IV will have to be devised.

VI. REGISTRATION

- Decisions will have to be made with regard to the form and content of the registration. The content shall include reference to the exclusive right to carry out pioneer activities by the pioneer investor in the pioneer area allocated to it, in accordance with paragraph 6, and to the compliance by the pioneer investor of its commitments under, inter alia, paragraphs 1(e), 7(b), 7(c) and 12 of resolution II.
- A certificate of registration will be issued to the pioneer investor by the appropriate body.
- Communication of the registration will be made to participants of the Preparatory Commission.

VII. COMPATIBILITY WITH THE CONVENTION

In accordance with paragraph 5(b) of resolution II, the certifying State shall ensure, before the entry into force of the Convention, that the pioneer activities are conducted in a manner compatible with the Convention.

ANNEX III

III. SESSIONS

Rule 9

Sessions

Subject to rule 31, sessions of the Preparatory Commission shall be held as decided by the Commission.

V. GENERAL COMMITTEE

Rule 13

Composition of the General Committee

1. The General Committee shall consist of the Chairman and other officers of the Preparatory Commission and of the Special Commissions. The Chairman of the Preparatory Commission, or in his absence a Vice-Chairman designated by him, shall serve as Chairman of the General Committee.

2. If the Chairman or any other member of the General Committee finds it necessary to be absent during a meeting of the General Committee, he may designate a member of his delegation to sit and vote in the Committee.

Rule 14

Functions of the General Committee

1. The General Committee shall assist the Chairman in the general conduct of the business of the Preparatory Commission and, subject to the decisions of the Commission, shall ensure the co-ordination of its work.

2. The General Committee shall meet periodicially throughout each session to review the progress of the Preparatory Commission, the Special Commissions and the other subsidiary bodies and to make recommendations for furthering such progress. It shall also meet at such other times during a session as the Chairman deems necessary or upon the request of any other of its members.

3. The General Committee can act on behalf of the Preparatory Commission as the executive organ for the implementation of resolution II of the Third United Nations Conference on the Law of the Sea.

4. The General Committee shall perform such additional tasks as are provided for in these rules of procedure or as are assigned to it by the Preparatory Commission.

/...

Rule 15

Co-ordination by the General Committee

Questions affecting the co-ordination of their work may be referred by the Special Commissions and the other subsidiary bodies to the General Committee, which may make such arrangements as it sees fit, including the holding of joint meetings of Special Commissions or other subsidiary bodies and, where appropriate, proposing to the Preparatory Commission the establishment of joint subsidiary bodies.

Rule 31

Consideration of financial or administrative implications

Before the Preparatory Commission takes a decision or makes a recommendation the implementation of which might have financial or administrative implications for the United Nations, it shall receive and consider a report from the secretaria on such implications.

VII. DECISION-MAKING

Rule 32

Voting rights

Each member of the Preparatory Commission shall have one vote.

Rule 33

Meaning of the phrase "representatives present and voting"

For the purposes of these rules, the phrase "representatives present and voti means representatives of members present and casting an affirmative or negative vote; representatives of members who abstain from voting shall be considered as not voting.

Rule 34

Decisions on procedural questions

Except as otherwise specified in these rules, decisions of the Preparatory Commission on all matters of procedure shall be taken by a majority of the representatives present and voting.

If the question arises whether a matter is one of procedure or of substance, the Chairman shall rule on the question. An appeal against this ruling shall immediately be put to the vote and the Chairman's ruling shall stand unless the appeal is approved by a majority of the representatives present and voting.

/...

Rule 35

Decisions on substantive matters

Decisions on the following matters shall be taken by consensus in the Preparatory Commission:

(a) On all matters which require consensus under the United Nations Convention on the Law of the Sea, including the decisions requiring consensus under articles 160, paragraph 2 (e), 161 and 162, and annex IV, article 11, paragraph 3, of the Convention;

(b) On rules and procedures for the implementation of resolution II of the Third United Nations Conference on the Law of the Sea and for the establishment of adequate machinery to administer the régime for the protection of pioneer investors;

(c) On the rules and regulations relating to the exploration and exploitation of the Area;

(d) On the final report on all matters within the mandate of the Preparatory Commission for submission to the Assembly of the Authority and the report containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea for submission to the meeting of the States Parties to the Convention; provided that, in the final part of the period of one year commencing from the date of deposit of the sixtieth instrument of ratification of or accession to the Convention, the general rule of a two-thirds majority referred to in rule 36, subparagraph (a), shall apply for the approval of the reports referred to above, if it is not possible to reach consensus; the final report shall contain only information on the activities of the Preparatory Commission and as annexes to the report the texts of those decisions and recommendations which were approved by the Preparatory Commission in the course of its work;

(e) In cases where financial obligations which are not provided for in the approved budget of the United Nations are imposed on States;

(f) For the purposes of this rule, "consensus" means the absence of any formal objection.

Rule 36

Decisions on substantive matters not mentioned in rule 35

(a) Decisions of the Preparatory Commission on other matters of substance not mentioned in rule 35 shall be taken by a two-thirds majority of the representatives present and voting, provided that such a majority includes at least a majority of the members participating in that session of the Preparatory Commission.

(b) Before a matter of substance is put to the vote every effort should be made to reach agreement by consensus and no voting shall take place until all efforts at consensus have been exhausted. The Chairman may defer a vote in order to allow for a cooling-off period of up to 72 hours.

(c) The determination that all efforts at reaching agreement by consensus have been exhausted shall be made by the majority specified in paragraph (a).

VIII. SPECIAL COMMISSIONS

Rule 44

Rules of procedure of the Special Commissions

These rules apply, mutatis mutandis, to the Special Commissions, except that:

(a) Decisions of the Special Commissions on all matters of procedure shall be taken by a majority of the representatives present and voting; and that

(b) Decisions on matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

Rule 45

Reports of the Special Commissions

1. Each Special Commission shall submit to the Preparatory Commission periodic reports containing a concise summary of recommendations and a statement of issues and actions.

2. Upon conclusion of the work of a Special Commission or upon the direction of the Preparatory Commission, each Special Commission shall compile a comprehensive report detailing the work of that Special Commission, including the texts of any recommendations or studies prepared by it and shall submit it to the Plenary.

IX. OTHER SUBSIDIARY BODIES

Rule 46

Establishment of other subsidiary bodies

The Preparatory Commission may establish such subsidiary bodies as it deems necessary for the performance of its functions. The competence and composition of each subsidiary body shall be determined by the Preparatory Commission.

Rule 47

Rules of procedure of other subsidiary bodies

These rules shall apply, mutatis mutandis, to other subsidiary bodies, except that:

(a) Decisions of such susidiary bodies on all matters of procedure shall be taken by a majority of the representatives present and voting; and that

(b) Decisions on matters of substance shall be taken by a two-thirds majority of the representatives present and voting.

Rule 50

Administrative duties of the secretariat

The secretariat shall:

(a) Notify all participants in the Preparatory Commission of the date, venue and duration of each session;

XII. MATTERS PERTAINING TO THE RULES OF PROCEDURE

Rule 56

Method of amendment

These rules of procedure may be amended by a decision taken by the majority specified in rule 36, subparagraph (a), after the General Committee has reported on the proposed amendment.

Rule 58

Special rules and procedures

These rules are without prejudice to other special rules and procedures which may be established by the Preparatory Commission to govern specific substantive matters, including those relating to the implementation of resolution II of the Third United Nations Conference on the Law of the Sea.

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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEA-BED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Fifth session
Kingston, Jamaica
30 March-16 April 1987

LETTER DATED 9 FEBRUARY 1987 FROM THE CHAIRMAN OF THE DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY ADDRESSED TO THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR THE LAW OF THE SEA

The Government of the Federal Republic of Germany on 17 December 1986 decided on further preparations for the establishment of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg.

In this context the Federal Government reaffirmed its particular interests in the establishment of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of Hamburg. It supports the decision taken by the Third United Nations Conference on the Law of the Sea on 24 August 1981 in favour of Hamburg as the seat of the International Tribunal. In view of this decision, it feels committed to ensure that the International Tribunal can start work in Hamburg from the date of its establishment. To honour this commitment, the Federal Government will, in collaboration with the Free and Hanseatic City of Hamburg, create the conditions required to this end.

I am instructed to inform you about the following:

(a) The Federal Republic of Germany is willing to erect the office building for the International Tribunal

for the Law of the Sea at its own expense and to make it available in accordance with the international practices that have evolved in connection with the provision of premises for United Nations bodies.

(b) In the event of the International Tribunal for the Law of the Sea being established before completion of the office building envisaged for it, the Federal Republic of Germany will ensure adequate temporary accommodation for the International Tribunal in the Free and Hanseatic City of Hamburg.

I should be grateful if this letter could be circulated as an official document of the Preparatory Commission.

(Signed) Horst WINKELMANN
Ambassador
Chairman of the Delegation of
the Federal Republic of Germany

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PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Seventh session
Kingston, 27 February-23 March 1989

LETTER DATED 15 MARCH 1989 FROM THE CHAIRMAN OF THE DELEGATION OF THE FEDERAL REPUBLIC OF GERMANY ADDRESSED TO THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL FOR THE LAW OF THE SEA

I refer to the Report on the Law of the Sea by the Secretary-General to the forty-third session of the General Assembly (A/43/718, 20 October 1988, p. 46) and to the earlier letter from the Chairman of the delegation of the Federal Republic of Germany contained in document LOS/PCN/80, 12 March 1987, and wish to inform you that the Federal Republic of Germany is holding an international architectural competition for the construction and design of the building to house the International Tribunal for the Law of the Sea in Hamburg.

The Federal Minister for Regional Planning, Building and Urban Development invited 20 architects, 10 from the Federal Republic of Germany and 10 from abroad, to submit designs by 10 July 1989 taking account of accommodation and staffing plans based on estimates and assumptions made by Government authorities in consultations with the United Nations Secretariat.

The competition will be carried out pursuant to the UNESCO recommendations for international architecture and urban planning competitions of 1979 and the relevant domestic regulations.

An international jury was established for this purpose, which will meet on 24 and 25 April 1989 in Hamburg to discuss and answer queries by the competitors.

The jury is scheduled to sit again on 12 and 13 September 1989 to award the prizes.

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The results of the competition will be published. The delegation of the Federal Republic of Germany will be pleased to make this report and further information available to the United Nations Secretariat and to other interested parties.

I should be grateful if this letter could be circulated as an official document of the Preparatory Commission.

(Signed) Antonius EITEL
Ambassador
Chairman of the Delegation of
the Federal Republic of Germany

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
New York, 1-12 August 1994

DRAFT BUDGET FOR THE FIRST FINANCIAL PERIOD OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA - PRELIMINARY ESTIMATES

Prepared by the Secretariat

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I. INTRODUCTION

1. The International Tribunal for the Law of the Sea 1/ was created by the 1982 United Nations Convention on the Law of the Sea. 2/ The Statute of the Tribunal (Annex VI to the Convention) sets out its composition and method of functioning. The Preparatory Commission for the International Seabed Authority and the International Tribunal for the Law of the Sea was set up to prepare for those two institutions. It was entrusted with the task of ensuring the entry into effective operation of the Tribunal. It was charged, inter alia, with preparing a report containing recommendations regarding practical arrangements for the establishment of the International Tribunal, to be submitted to the meeting of the States Parties to the Convention. 3/ The Preparatory Commission created a Special Commission 4 and responsibility was delegated to it. The Secretariat was mandated to prepare the necessary working papers and formulated the working papers on the administrative arrangements, structure and financial implications of establishing the Tribunal, 4/ with alternatives as to the number of official working languages. 5/ Subsequently the Preparatory Commission laid down the stipulation that the Tribunal should be cost-effective and should respond to the level of activity. The Secretariat responded by presenting a proposal for phasing in the establishment of the Tribunal during the formative period. 6/ It also presented a paper on issues concerning its initial financing and budget. 7/ These were intended to cover the first years of functioning of the Tribunal. Following the review of these papers by the Special Commission, at its request the Secretariat formulated a revised working paper setting out the estimated financial implications of alternative approaches to the phasing in of the Tribunal as well as a report on the alternatives as to the means of initial financing. 8/

2. The preliminary organizational phase - the "start-up" period of the Tribunal's activities - is, however, not covered in the working papers on the administrative arrangements, structure and financial implications. 9/ The administrative arrangements and financial implications of this preliminary phase are addressed in the present paper to facilitate consideration of the requisite budgetary arrangements in view of the entry into force of the Convention on 16 November 1994.

3. Certain assumptions have to be made as regards the organizational arrangements, the nature, timing and periodicity of meetings, the number of judges to be active and in attendance, and other factors. The cost implications presented hereunder are based on those assumptions and others as noted. The proposals would take into account the criteria laid out in the Statute of the Tribunal and in its draft Rules. 10/

II. TIMING AND PHASES OF INITIAL ACTIVITIES

A. Organizational phase (start-up period)

4. The preliminary organizational phase, the "start-up" period of the Tribunal's activities, would commence following the election of the judges at the meeting of States Parties. The financial implications of the meeting of

/...

States Parties are not included in the present budgetary estimates. 11/ Consistent with the requirements of the Convention, the 21 Members (judges) of the Tribunal would be elected at the meeting of States Parties convened for the purpose, 12/ probably in May 1995. 13/ It is understood, however, that initially only a limited number of judges would be required to be active and available. 14/ However, at the very outset, during the start-up phase, the full complement of 21 judges would participate in executive sessions at three or four organizational meetings of limited duration (three to four weeks each). It is assumed that the organizational meetings would be periodic and not continuous. 15/

5. On the basis of the above assumptions the administrative arrangements for setting up the Tribunal should commence in July 1995, i.e., about two months before the tribunal as a whole first convenes, in September 1995 16/ for the first organizational meeting of four to six weeks. At the first organizational meeting, 17/ two weeks could be set aside for preliminary organization, election of the President and Vice-President, setting up of committees etc., and other practical internal arrangements. This could be followed by the inauguration of the Tribunal with a formal swearing-in ceremony for the judges. Thereafter they could resume in executive session for the remaining two to four weeks. They would then disperse and resume in executive sessions later in the year. During the break the President, Vice-President and three other judges (following scheme B referred to in para. 10 below) would continue to be active and available. They would carry out the follow-up activity to the first executive session and would prepare for the next. The next executive session, also of four weeks' duration, could be held later in the year. 18/ This would be followed by one or two further sessions of four weeks' duration each, in the next year. 19/

6. During this organizational phase, which is anticipated to span eight or nine months from when they first convene, the judges would organize the work, elect officials among the judges, make the necessary administrative arrangements and appoint a(n) (acting) Registrar. Until long-term financial and budgetary arrangements are made, the tentative plans would be for start-up of operations with a small nucleus of staff to service the meetings of the judges and to organize the Registry. Pending the establishment of terms, conditions and other arrangements, an acting Registrar could be charged with carrying out the functions. The judges would also have to adopt the Rules of the Tribunal, elect a Registrar and appoint a deputy, formulate the terms and conditions of service for the Registry officials and staff, organize the procedures and arrangements, including those for dealing with cases and internal procedures, for budget, accounts, administration, personnel, etc.

7. The whole range of working papers and documents required by the Tribunal for its use, review and adoption would be submitted to it as addenda to the report to the meeting of States Parties (LOS/PCN/SCN.4/WP.16). The original working papers and the revisions by the Secretariat after review by the Special Commission, which provide a history of developments, would also be available, as would the other documentation of Special Commission 4. 20/ Consequently it is assumed that during the organizational phase there would be a very limited need for new documentation, nor is it anticipated that a volume of new documentation would emanate from the executive sessions of the judges. Limited requirements

as to interpretation and translation are also anticipated in view of the documentation currently available in all six languages and in view of the assumption that the Tribunal will function in only two official working languages. 21/

8. During this phase the Registry would also have to carry out its internal administrative organization and recruitment, while giving effect to the personnel, budgetary and accounting arrangements that are adopted.

B. First functional phase

9. At the end of the organizational phase, the Tribunal would commence its first functional phase, perhaps in mid 1996. The organizational arrangements for that stage may be reviewed under the appropriate heads.

1. Judiciary

10. It was the understanding of the Special Commission that at the outset the workload of the Tribunal would be light and that initially there may not be a need for the full complement of judges to be in active participation. 22/ Under the phasing-in approach, certain Members would be required to be active and available at all times, while the others would hold themselves available in reserve, in the event that a greater number of Members was required or when a full Tribunal had to be constituted. 23/ Thus, under the phasing-in approach, three alternative schemes, schemes A, B and C, are assumed (for details about the schemes, see LOS/PCN/SCN.4/WP.8/Add.2, paras. 1-22):

(a) Scheme A: 2 Members (President and Vice-President) active and available at Seat, 19 Members hold themselves in reserve;

(b) Scheme B: 5 Members (President, Vice-President and 3 Members) active and available at Seat, 16 Members hold themselves in reserve;

(c) Scheme C: 11 Members (President, Vice-President and 9 Members) active and available at Seat, 10 Members hold themselves in reserve.

In the present paper, only Scheme B is considered. 24/

11. When the Tribunal is expected to become functional and ready to receive cases, in the third quarter of 1996, the Registry should be adequately staffed for the purpose. Thus, it is also assumed that in the first functional phase the Registry will be set up on the basis of scheme B referred to above. 25/ Practical arrangements would be assumed to flow from this scheme of operation and the consequential budgetary implications are assumed. It is also assumed that early in the organizational phase 26/ the Tribunal would have established the arrangements as to which Members would be active and available. According to scheme B this would be the President, Vice-President and three other judges. The other Members (16) would be in reserve to be available only when necessary. They would only receive an annual allowance ("honorarium") unless and until they are called upon to serve for a specific case or a specified period. 27/ The

"active" judges would receive all allowances and subsistence payments for full-time participation and availability. 28/

12. For the purpose of determining the level of activity and the consequential level of services and cost estimates, it is assumed that the annual workload of the Tribunal would comprise five to six contentious cases and four to six applications such as those for provisional measures or the prompt release of vessels and crews. 29/ It is also assumed for the purposes of the present paper that the Tribunal will have no more than two official working languages.

13. The arrangement of five judges active and participating would ensure (a) geographical representation; 30/ (b) the presence of the President at the Seat at all times; 31/ (c) the constitution of a chamber of summary procedure 32/ to deal, inter alia, with questions of prompt release of vessels and crew, 33/ and the constitution of ad hoc special chambers; 34/ and (d) the constitution of standing special chambers for particular categories of disputes. 35/

14. The transition from scheme B with 5 judges active and participating, to scheme C with 11 judges active and participating 36/ could be made at any stage if the workload so requires. The financial implications of such a change can be seen in the estimates.

2. Registry

15. The Registry is the administrative organ of the Tribunal. It will provide legal, procedural, administrative, diplomatic and any technical support for the Tribunal. It will also have responsibility for the financial and accounting administration, and for documentation, archival and library services. The organization of the Registry and the appointment of staff is to be approved by the Tribunal on the recommendation of the Registrar. 37/

16. It is assumed that an appropriate structure for the Registry would require three main functional divisions, as follows:

(a) Legal Division;

(b) Documentation/Archives/Linguistic Services Division;

(c) Division for Administration and General Services.

17. Post requirements. Estimates of post requirements are based on the governing principles of cost-effectiveness and a consequential phasing in during the evolutionary stages while ensuring judicial independence. The estimates of post requirements also reflect an approach whereby Professional and General Service staffing is based on the recruitment of multivalent staff who have combined capabilities. 38/

18. The assumptions about post requirements are summarized in annexes I and II to the present paper. These assumptions as regards the level and number of posts involved closely follow the equivalent functions performed by the

International Court of Justice and the staffing structure of that Court. The review of the Special Commission included a review of these requirements as well. It is assumed that staff in the Professional category and above would be recruited internationally, and that staff in the General Service category would be recruited locally.

19. It is assumed that interpretation and translation services would be provided on a temporary basis as needed. The present paper does not include conference-servicing costs. 39/

III. ASSUMPTIONS COMMON TO ORGANIZATIONAL AND FUNCTIONAL PHASES

20. All the assumptions about functions of staff, post qualifications, recruitment levels, remuneration of judges and Registry staff and bases for recurrent and non-recurrent expenditures would apply equally to the organizational phase/start-up period and to the first functional phase.

21. The assumptions concerning the organizational phase/start-up period would apply to the second half of the calendar year 1995 and to the first half of the calendar year 1996.

22. Staff deployment. The proposed deployment period for the recruitment and entry on duty of the full contingent of staff of the Registry is assumed to be as follows: (a) the first group would be on duty by 1 September 1995; and (b) the next group should be on duty by 1 June 1996. Estimates of post requirements during the organizational phase/start-up period, under these assumptions, are presented in annex III to the present paper.

IV. ASSUMPTIONS WITH REGARD TO COST ESTIMATES

23. Remuneration of Members of the Tribunal. The level of remuneration that would be appropriate for the Members (judges) of the Tribunal was reviewed by the Commission in 1990 on the basis of equivalencies with remuneration levels of judges of the International Court of Justice applicable at the time. There has since been an increase in their remuneration. 40/ The review was based on several factors. In order to minimize the cost implications during the initial phase, it is assumed that the amount of annual allowance should be kept at the basic level. Thus, those Members who are on "reserve" and not actively engaged in the business of the Tribunal would only receive a limited annual allowance (as an honorarium), which for the purpose of the estimates in the present paper is assumed to be $25,000. They would not receive a special allowance or any other remuneration in the usual course, unless they are called upon to serve. Their total remuneration would only be the amount of the annual allowance.

24. For those Members who are in the "active" group and are called upon to serve, the special allowance for a year cannot exceed the annual allowance, and on the basis of the assumptions in the present paper, the maximum special allowance would also thus be $25,000. Given the need for active Members to maintain a presence at or near the Seat of the Tribunal, it is assumed that a

supplementary subsistence allowance would be paid. It is assumed that where active engagement and presence is required for a prolonged period, the maximum amount of subsistence allowance would be for 250 days in any calendar year. 41/ Utilizing the current level of subsistence payment under United Nations practice for Hamburg, the maximum amount of subsistence payment for any calendar year would therefore be computed at $62,500. 42/ Thus, the maximum remuneration that a Member would receive, including the maximum subsistence allowance, would be $112,500 per year. This would bring the total remuneration of a Member who is present and functions throughout the year to a comparable level with the salaries of judges of other international courts and tribunals. 43/ The remuneration levels were applicable at the time of that review in 1990. A multiplier would be computed to bring the total remuneration to the same level that judges of other courts currently receive. That multiplier would be used in relation to each element of allowances so that the net salaries are commensurate. When the Tribunal is fully functional and active, the subsistence component could be incorporated into the basic annual and special allowances.

25. Staffing structure, levels and remuneration of staff. The structure of the Registry, its functions, the post requirements and levels assigned to its staff closely follow the experience and practice of the International Court of Justice and the staffing of its Registry. Staff of the Registry would be remunerated according to the common system of the United Nations system of organizations, as administered by the International Civil Service Commission.

26. Other items of recurrent expenditure. Estimates of other objects of expenditures are based on the budgetary experience of units of the United Nations which have comparable number, category and level of staff. The budgetary experience of the International Court of Justice has been drawn upon, in particular. Adjustments have been made bearing in mind the special needs of the Tribunal as a unique sui-generis institution and as an institution commencing functioning with an evolutionary approach.

27. Non-recurrent expenditures. Estimates of non-recurrent expenditures, including those on office equipment and furniture, data-processing equipment, transportation equipment, etc., are based on the budgetary experience of the United Nations.

28. Currency. For the purpose of making the cost estimates, United States dollars have been used. However, in determining the currency in which the Tribunal would operate:

- The Preparatory Commission may wish to give consideration to the fact that the currency of the host country of the headquarters has in practice been used in the case of the United Nations.

29. The preliminary estimates of the administrative expenses of the Tribunal for calendar year 1996, and for the start-up period (May-December 1995), are presented in tables 1 and 2, respectively.

V. BUDGETARY ARRANGEMENTS FOR THE FIRST FINANCIAL PERIOD

30. The Convention states that the expenses of the Tribunal shall be borne by the States Parties and the International Seabed Authority and also by other users of the Tribunal, which includes States that are not States Parties. 44/

31. Apportionment of contributions (scale of assessments). There is no clear guidance in the Convention with regard to the manner in which the financing of the Tribunal would be apportioned between States Parties and the Authority. 45/ It is to be decided by the meeting of States Parties.

32. A scheme for apportionment or a scale of assessments would have to be adopted. The determinations could be based on the capacity of each State Party to pay, taking into account the established criteria and the international practice in this regard.

33. Pending the review and adoption of the first annual budget of the Tribunal, it was concluded by the Special Commission that a means of financing the interim expenses and providing for an interim mechanism to control the provisional budget and to control the interim expenses needed to be determined. This appears necessary in view of the anticipated delay in the approval of a scale of assessments. In this context, following international practice, the adoption on an interim basis of an existing scale of assessments such as that of the United Nations was considered an appropriate option. Such an arrangement would necessarily be without prejudice to the adoption later of a scale of assessments specific to the Tribunal. 46/

34. A provisional period is thus foreseen during which it would be necessary to make financial arrangements through the adoption of a provisional budget and the establishment of a working capital fund. This should cover the whole of the first financial period with the possibility of extensions to the next financial period pending renewal, revision or supersedence of the arrangement existing at the time. The Special Commission reviewed the alternatives as regards initial financing of the Tribunal. No conclusion was drawn as regards apportioning expenses among the States Parties. The option of advanced payment against contributions to be assessed in the future was considered as one possible source of initial funding. The alternative means of funding considered by the Special Commission are referred to in the relevant document. 47/

35. Start-up arrangements. General Assembly resolution 48/263, which was adopted by the Assembly on 28 July 1994, to which the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 is annexed, expresses (in its first preambular paragraph):

> "... the desire to achieve universal participation in the United Nations Convention on the Law of the Sea of 10 December 1982 ... and to promote appropriate representation in the institutions established by [the Convention]".

This expresses the political will to permit all States on a global basis to participate in constituting the Tribunal and particularly in the election of the judges. In the event that such an arrangement transpires, States that are not

yet Parties to the Convention, but which participate in constituting the Tribunal would also contribute to its costs.

36. It is relevant to note in this context that the Special Commission considered alternative means of initial financing of the Tribunal on the basis of LOS/PCN/SCN.4/WP.11 ("Issues concerning the initial financing and budget of the Tribunal") and the report on that review (LOS/PCN/SCN.4/WP.16/Add.7). The Preparatory Commission at its forthcoming session may be expected to make a recommendation in this connection in its report.

Notes

1/ Hereinafter referred to as "the International Tribunal".

2/ Hereinafter referred to as "the Convention".

3/ Para. 10 of resolution 1 of the Third United Nations Conference on the Law of the Sea. The Meeting of States Parties for election of the Members (judges) is to be convened in accordance with Annex VI, art. 4, para. 4, of the Convention.

4/ LOS/PCN/SCN.4/WP.8.

5/ LOS/PCN/SCN.4/WP.8/Add.1.

6/ LOS/PCN/SCN.4/WP.8/Add.2.

7/ LOS/PCN/SCN.4/WP.11.

8/ LOS/PCN/SCN.4/WP.16/Add.6 and Add.7 respectively, submitted by the Secretariat. See also Chairman's summary of discussions contained in LOS/PCN/SCN.4/L.14 in relation to the former and LOS/PCN/SCN.4/L.18 in relation to the latter.

9/ Para. 1 supra; see also LOS/PCN/SCN.4/WP.8/Add.2, para. 13.

10/ LOS/PCN/SCN.4/WP.16/Add.1.

11/ The financial implications of the meeting of States Parties, including the conference-servicing implications, are not reflected in the present paper. Separate estimates would be required for the same. The responsibility for convening and servicing the first meeting of States Parties (to be held in May 1995) were imposed on the Secretary-General as a result of the adoption of the Convention.

12/ The Convention specifies the number, which cannot be varied without modifying the Convention.

13/ The Convention requires the convening of the meeting of States Parties to elect the judges within six months of entry into force. In view of the several notifications, invitations, etc., to be issued within established time-

limits, it is assumed that the first meeting would be held towards the end of the six-month period,which would be before 16 May 1995.

14/ As proposed in scheme B of working paper (LOS/PCN/SCN.4/WP.8/Add.2).

15/ This would follow the pattern or meetings and arrangements made by the judges of the International Tribunal on the former Yugoslavia.

16/ Consistent with the precedent and practical considerations, this would be two to three months after the elections.

17/ Proposed to be in September 1995.

18/ Possibly in November/December 1995.

19/ Possibly in February/March and again possibly in April/May 1996.

20/ For a list of working papers see annex IV to the present document.

21/ See para. 13 below.

22/ LOS/PCN/SCN.4/WP.16/Add.7, para. 4.

23/ LOS/PCN/SCN.4/WP.8/Add.2, para. 19.

24/ LOS/PCN/SCN.4/WP.16/Add.6, para. 89.

25/ LOS/PCN/SCN.4/WP.16/Add.6, para. 98 (b).

26/ Possibly in September 1995.

27/ LOS/PCN/SCN.4/WP.16/Add.6, para. 95.

28/ LOS/PCN/SCN.4/WP.16/Add.6, para. 96.

29/ LOS/PCN/SCN.4/WP.16/Add.6, para. 18.

30/ LOS/PCN/SCN.4/WP.16/Add.6, para. 87.

31/ As required by Annex VI, art. 12, para. 3.

32/ Annex VI, art. 15; see also draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.16/Add.1), art. 17.

33/ See draft Rules of the Tribunal, supra, art. 90, para. 3.

34/ Annex VI, art. 15; see also draft Rules of the Tribunal, supra, art. 19.

35/ Annex VI, art. 15; see also draft Rules of the Tribunal, supra, art. 18.

36/ LOS/PCN/SCN.4/WP.8/Add.2.

37/ LOS/PCN/SCN.4/WP.16/Add.6, para. 26.

38/ LOS/PCN/SCN.4/WP.16/Add.6, para. 99.

39/ LOS/PCN/SCN/4/WP.16/Add.6, para. 62.

40/ In 1993 the judges of the International Court of Justice received a net annual remuneration of US$ 145,000 (see A/C.5/48/66).

41/ LOS/PCN/SCN.4/WP.16/Add.6, para. 94.

42/ LOS/PCN/SCN.4/WP.16/Add.6, para. 97.

43/ The judges of the International Court of Justice are currently entitled to a net salary of $145,000 per annum (see A/C.5/48/66). In the case of the International Court of Justice, the judges are restricted in respect of the activities they can carry out (Article 16 of the Statute). The judges are required to attend sessions of the Court in The Hague each year. The Court remains permanently in session, except during judicial vacation. Unless they are on approved leave or ill or for other serious reasons explained to the President, they are to hold themselves permanently at the disposal of the Court (Statute, Article 23). The Judges of the International Tribunal for the former Yugoslavia receive the same salary as judges of the International Court of Justice, subject to their giving up all remunerated occupations for the duration of their judgeship (see A/C.5/48/36, para. 7). These judges also established three annual sessions which they are required to attend (document IT/13 of 30 November 1993). Besides the annual and special allowances, additional allowances are paid to the President and the Vice-President when acting as President in each case.

44/ Annex VI, art. 19.

45/ LOS/PCN/SCN.4/WP.16/Add.7, para. 10.

46/ LOS/PCN/SCN.4/WP.16/Add.7, paras. 11 and 14.

47/ LOS/PCN/SCN.4/WP.16/Add.7, paras. 15 and 21.

ANNEX I

REGISTRY STAFFING LEVELS AND DESIGNATIONS

FIRST FUNCTIONAL PHASE (STARTING JULY 1996)

Level	Functions	Number of posts
ASG	Registrar	1
D-2	Deputy Registrar	1
D-1	Assistant Registrar	0
	Principal Legal Secretary (Secretary, Rules Committee)	1
	Executive Officer	0
D-5	Accountant/Establishment Officer (Secretary, Budgetary and Administrative Committee)	1
	Senior Secretary (Secretary, Public Relations)	1
	Senior Secretary	1
P-4	Accountant/Establishment Officer	1
	Head, Documents Dept./Librarian (Secretary, Library and Archives Committee)	1
	First Secretary (Secretary, Staff Appeals Board)	1
	First Secretaries	0
	Special Assistant	0
	Revisers/Translators	2
	Information Officer	1
	Head of Office Secretarial Services	0
P-3	Secretaries	1
	Special Assistant	1
	Revisers/Translators	0
	Head of Archives	1
	Head of Administration/Personnel	0
	Coordinator, General Services	0
	Librarian	1
P-2/P-1	Associate Secretary	0
	Judiciary Secretaries/Researchers	1
	Associate Librarian	0
	Associate Administrative/Budget Officer	1
	Head of Office Secretarial Services	1
	Head of Printing	1
	Associate Archives Officer	1

/...

Level	Functions	Number of posts
GS	Principal level	5
	Other levels	28
	Security Officers	2
	TOTAL	56

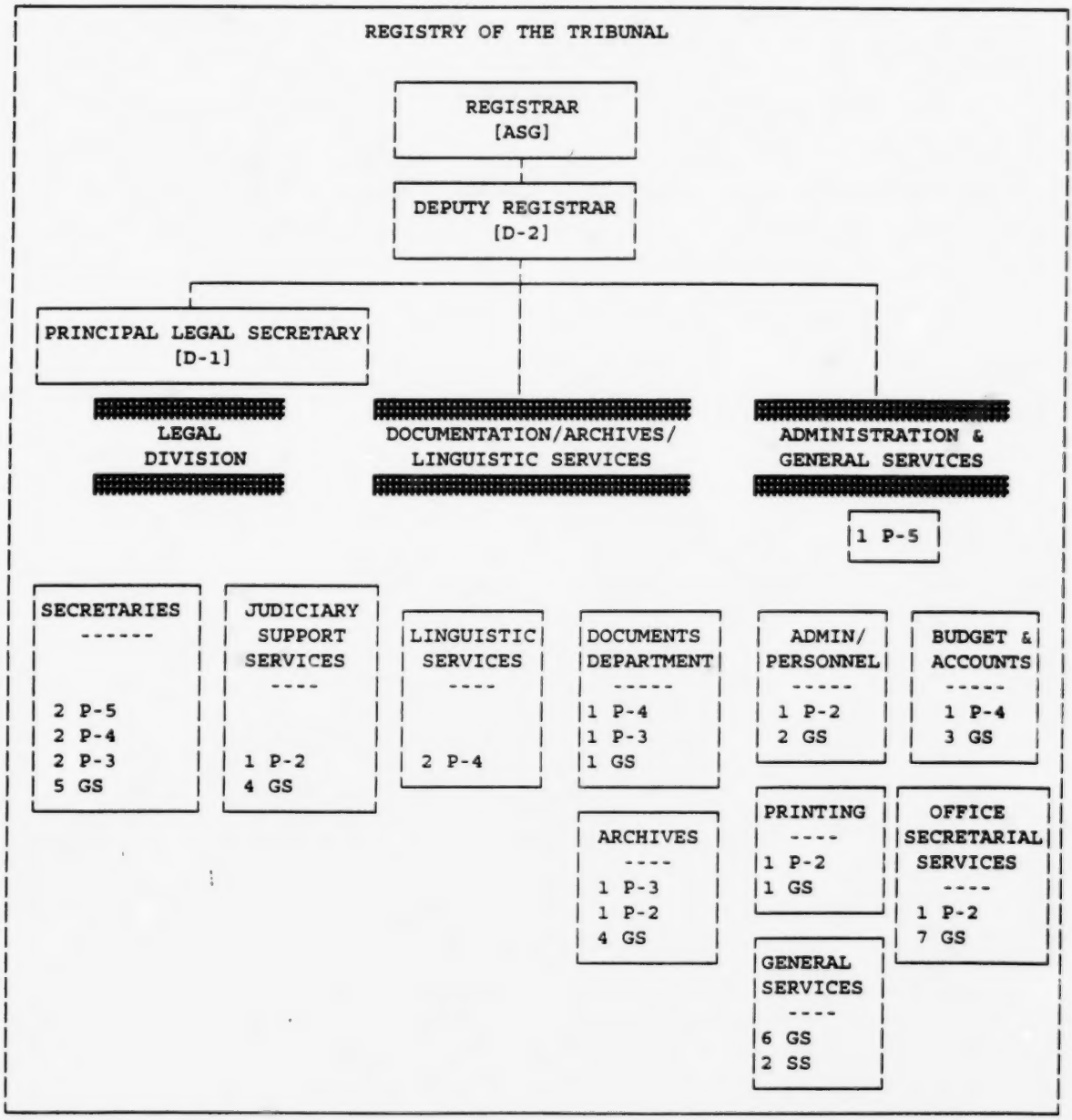
Post requirements

ASG	D-2	D-1	P-5	P-4	P-3	P-2/P-1	GS Princ. level	Other level	Total
1	1	1	3	6	4	5	5	30	56

ANNEX II

STAFF DISTRIBUTION BASED ON FUNCTIONS AND DIVISIONS

FIRST FUNCTIONAL PHASE (STARTING JULY 1996)



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ANNEX III

POST REQUIREMENTS IN THE ORGANIZATIONAL PHASE

START-UP PERIOD, JULY 1995-JUNE 1996

Post requirements

D-2	D-1	P-5	P-4	P-3	P-2/1	Total Professional and above	Total General Service	Grand Total
July 1995 - June 1996								
1	1	1	1	1	2	7	14	21

ANNEX IV

DOCUMENTS OF SPECIAL COMMISSION 4 - WORKING PAPERS

(Abbreviated titles)

LOS/PCN/SCN.4/-

WP.1	Practical arrangements for the establishment of the International Tribunal (Working paper by the Secretariat) [16 March 1984]
WP.2	Draft Rules of the Tribunal. (Prepared by the Secretariat) [28 March 1985]
WP.2/Add.1 (and Corr.1)	Supplement to the Draft Rules of the Tribunal. (Prepared by the Secretariat) [25 March 1985]
WP.2/Rev.1/Part I	Draft Rules of the Tribunal (Revised). Part I. Articles 1 to 93. (Prepared by the Secretariat) [30 June 1986]
WP.2/Rev.1/Part II	Draft Rules of the Tribunal (Revised). Part II. Articles 94 to 140. (Prepared by the Secretariat) [24 March 1987]
WP.3	Table of concurrence of the draft Rules of the Tribunal. (Prepared by the Secretariat) [18 March 1985]
WP.4	Headquarters Agreements and related instruments on Privileges and Immunities. (Issues for consideration) [2 September 1986]
WP.5 (Part I)	Draft Headquarters Agreement between the Tribunal and the Federal Republic of Germany (Part I). (Prepared by the Secretariat) [4 August 1987]
WP.5 (Part II)	Draft Headquarters Agreement (Part II) (Articles 17-28). (Prepared by the Secretariat) [26 February 1988]
WP.5/Rev.1 (and Corr.1)	Revised draft Headquarters Agreement. (Prepared by the Secretariat) [8 August 1988]
WP.6	Draft Convention/Protocol on the Privileges and Immunities of the Tribunal. (Prepared by the Secretariat) [23 March 1988]
WP.6/Rev.1 (and Corr.1-4)	Revised Draft Protocol. (Prepared by the Secretariat) [25 February 1991]
WP.7	Issues concerning relationship agreements between the Tribunal and other International Organizations. (Working paper by the Secretariat) [20 March 1989]

/...

WP.8	Administrative arrangements, structure and financial implications of the Tribunal. (Prepared by the Secretariat)	[27 February 1990]
WP.8/Add.1 (and Corr.1)	Administrative arrangements ... (Supplementary cost estimates reflecting alternatives as to official working languages). (Prepared by the Secretariat)	[17 August 1990]
WP.8/Add.2 (and Corr.1)	Administrative arrangements ... (A scheme to phase in the establishment of the Tribunal). (Prepared by the Secretariat)	[29 August 1990]
WP.9	Relationship arrangements between the United Nations and the Tribunal. (Draft Agreement on Cooperation and Relationships between the United Nations and the Tribunal). (Prepared by the Secretariat)	[16 March 1990]
WP.9/Add.1	Relationship arrangements ... (Arrangements regarding the United Nations common system of salaries and benefits, and participation in the United Nations Joint Staff Pension Fund). (Prepared by the Secretariat)	[16 March 1990]
WP.10	Principles governing a relationship arrangement between the Tribunal and the International Seabed Authority. (Prepared by the Secretariat)	[10 August 1990]
WP.11	Issues concerning the initial financing and budget of the Tribunal. (Prepared by the Secretariat)	[1 August 1991]
WP.12	Suggestions of the Latin American and Caribbean Group regarding languages of the Tribunal (WP.2/Rev.1; WP.8 and Add.1 and 2)	[13 August 1992]
WP.13 (and Corr.1)	Proposals submitted by Austria, Belgium, Canada, Côte d'Ivoire, France, Greece, India, Poland, Senegal and Switzerland concerning the languages of the Tribunal (WP.2/Rev.1; WP.8 and Add.1 and 2)	[18 August 1992]
WP.14	Draft outline for Report of the Preparatory Commission containing recommendations regarding practical arrangements for the establishment of the Tribunal	[19 August 1992]
WP.15	Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the Tribunal	[5 March 1993]
WP.15/Add.2	Draft Report ... (Final draft Headquarters Agreement between the Tribunal and the Federal Republic of Germany). (WP.5/Rev.2)	[5 March 1993]

WP.15/Add.3	Draft Report ... (Final draft Protocol on the Privileges and Immunities of the Tribunal). (WP.6/Rev.2) [5 March 1993]
WP.15/Add.6	Draft Report ... (Administrative Arrangements, Structure and Financial Implications of the Tribunal). (WP.8/Rev.1) [13 April 1993]
WP.16	Provisional Report of Special Commission 4. (Draft Report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations for submission to the Meeting of States Parties to be convened in accordance with annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the Tribunal) [12 October 1993]
WP.16/Add.1	Provisional Report ... (Final draft Rules of the Tribunal). (Working paper by the Secretariat) (WP.2/Rev.2) [... January 1994]
WP.16/Add.2	Provisional Report ... (Final draft Headquarters Agreement between the Tribunal and the Federal Republic of Germany). (WP.5/Rev.2) [14 October 1993]
WP.16/Add.3	Provisional Report ... (Final draft Protocol on the Privileges and Immunities of the Tribunal). (WP.6/Rev.2) [14 October 1993]
WP.16/Add.4	Provisional Report ... Relationship arrangements between the United Nations and the Tribunal. (Final Draft Agreement on Cooperation and Relationships between the United Nations and the Tribunal). (Working paper by the Secretariat) [10 December 1993]
WP.16/Add.5	Provisional Report ... (Report on principles governing a Relationship Agreement between the Tribunal and the International Seabed Authority). (WP.10/Add.1) [10 December 1993]
WP.16/Add.6	Provisional Report ... (Administrative Arrangements, Structure and Financial Implications of the Tribunal). (WP.8/Rev.1) [15 October 1993]
WP.16/Add.7	Provisional Report ... (Report with recommendations concerning the initial financing and budget of the Tribunal). (Prepared by the Secretariat) [18 October 1993]
WP.16/Add.8	Provisional Report ... (Provisional agenda for the First Meeting of States Parties to the Convention, convened in accordance with annex VI, article 4, of the Convention). (Working paper prepared by the Secretariat) [9 December 1993]

WP.16/Add.9 Provisional Report ... (Provisional rules of procedure for the Meeting of States Parties to the Convention, convened in accordance with annex VI, article 4, of the Convention). (Working paper prepared by the Secretariat)
[9 December 1993]

WP.16/Add.10 Provisional Report ... (Review of alternatives for the distribution of seats among Members of the Tribunal). (Working paper prepared by the Secretariat) [.....]

Notes

a/ These working papers also constitute addenda 4, 5, 7, 8, 9 and 10, respectively, to document WP.15, which were not previously issued as separate documents.

TABLE 1

ADMINISTRATIVE EXPENSES OF THE TRIBUNAL a/, b/

JANUARY-DECEMBER 1996

(Preliminary estimates) c/

(In thousands of United States dollars)

Objects of expenditure		Expenses
A.	Recurrent expenditures	
	Established posts	2 253.6
	Temporary assistance for meetings	209.7
	General temporary assistance	91.2
	Overtime	33.0
	Temporary posts	342.8
	Common staff costs	654.9
	Representation allowance	4.0
	Official travel of staff	63.5
	External printing and binding	166.4
	Annual and special allowances of Members	1 190.0
	Rental and maintenance of premises	(191.0) d/
	Rental and maintenance of equipment	69.3
	Communications	58.9
	Hospitality	4.0
	Miscellaneous services	3.0
	Supplies and materials	81.7
B.	Non-recurrent expenditures	
	Furniture and equipment	40.3
	Total	5 266.3

(Footnotes on following page)

(Footnotes to table 1)

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a/ These estimates are preliminary and indicative, based on previous documentation (LOS/PCN/SCN.4/WP.8 and addenda) from which the relevant items have been extrapolated. The relevant administrative and budgetary departments have yet to do the same.

b/ Data on costs of established posts, common staff costs and representation allowance, etc., are based on the United Nations "Standard Costs Version", which was the basis for the estimates in the working papers considered by the Special Commission, i.e., LOS/PCN/SCN.4/WP.8 and addenda thereto, and LOS/PCN/SCN.4/WP.16/Add.6. These have been revised to account for the inflationary factor applicable to 1995. In the absence of data applicable to United Nations staff in Hamburg, the data on duty station The Hague is used in the table.

c/ If any applications or cases are submitted during this period, the financial implications of court proceedings will have to be separately estimated and appropriate budgetary arrangements provided; see paras. 30-32, supra.

d/ Not included in total. In the event that no rental is involved, maintenance costs may be required. Assumes only utility payments and for services in the light of the host country providing permanent facilities and temporary facilities pending completion of the permanent facility.

TABLE 2

ADMINISTRATIVE EXPENSES OF THE TRIBUNAL

START-UP PERIOD, JULY-DECEMBER 1995 a/, b/

(Preliminary estimates) c/

Objects of expenditure	Expenses (in thousands of United States dollars)
A. Recurrent expenditures	
Established posts	350.6
Temporary assistance for meetings	69.7
General temporary assistance	31.3
Overtime	7.2
Temporary posts	37.8
Common staff costs	192.0 d/
Representation allowance	1.3
Official travel of staff	27.0
External printing and binding	11.6
Annual and special allowances of Members	430.6 e/
Rental and maintenance of premises	(44.0) f/
Rental and maintenance of equipment	43.4
Communications	10.4
Hospitality	1.3
Miscellaneous services	0.9
Supplies and materials	14.3
B. Non-recurrent expenditures	
Purchase of furniture and equipment	13.4
Total	1 242.8

(Footnotes on following page)

(Footnotes to table 2)

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a/ These estimates are preliminary and indicative. They are based on previous documentation (LOS/PCN/SCN.4/WP.8 and addenda) from which the relevant items have been extrapolated. The relevant administrative and budgetary departments have yet to do the same.

b/ If any applications or cases are submitted during this period, the financial implications of court proceedings will have to be separately estimated and appropriate budgetary arrangements provided; see paras. 30-32 supra.

c/ Does not include costs of preparatory missions for establishing costing standards or for preparing facilities.

d/ Includes initial travel of judges.

e/ Assumes President, Vice-President and three judges present for four months September-December 1995; also assumes the other judges attend executive sessions for two months; also assumes that all judges receive annual allowance, special allowances and subsistence payments on the basis of duration of active participation.

f/ Assumes only utility payments and for services in the light of the host country providing permanent facilities and temporary facilities pending completion of the permanent facility.

UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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LOS/PCN/L.4
12 April 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Second session
Kingston, Jamaica
19 March - 13 April 1984

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. Special Commission 4 is mandated to prepare a report with recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea to be submitted to a meeting of States Parties.

2. At the commencement of the session, the Special Commission had before it a draft agenda (LOS/PCN/SCN.4/CRP.1) and a working paper prepared by the Secretariat (LOS/PCN/SCN.4/WP.1). The working paper identifies seven main issues. It elaborates on these issues, identifies the issues in the different areas, refers to appropriate precedent, and draws attention to any interrelationship with the work of the Plenary of the Preparatory Commission. The working paper presented by the Secretariat was considered to be most useful.

3. As a first matter of business, the Special Commission adopted its provisional agenda with the addition of a further item "other matters" in order to make it broad and flexible enough to serve also for the future sessions (LOS/PCN/SCN.4/CRP.1/Rev.1).

4. The Commission thereafter considered the organization of its work. There was general agreement that the seven items listed in paragraph 3 of working paper 1 cover a substantial portion of the work programme to be dealt with by the Special Commission. Moreover, it was agreed that the list of the Commission's tasks contained in paragraph 3 of working paper 1 should include as an additional item the matter of relationship agreements, which is touched upon in Part II of working paper 1. Concurrent views were also expressed on

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the need for the Commission to prepare rules for the Meeting of States Parties to be convened for the consideration of the recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea, and for the election of the members of the Tribunal. The Commission did not consider it appropriate to attempt to prepare a comprehensive list of issues and items to be included in its programme of work since as the Commission's work progresses the need may arise for the consideration of additional items. The Commission thereafter, in the light of the recommendations of the Chairman and the Bureau, decided to commence deliberations by considering the procedural rules of the Tribunal since that was the most complex and time-consuming task before the Commission. In adopting that course of action the Commission endorsed the Chairman's suggestion that, to maintain a degree of flexibility in the organization of work, it should not decide on the sequence in which the other items would be examined.

5. The Commission first heard general statements on the different aspects of the Commission's work, in the course of which reference was made to the formulation of the Headquarters Agreement and inter alia the need for certainty as to the applicable national laws of the seat of the Tribunal.

6. In the context of procedural rules, the list of items covered in the working paper was examined. The Special Commission decided that, in principle, the rules of the International Court of Justice should guide the preparation of draft rules. On the recommendation of the Chairman, it was decided that initial consideration should be given to certain issues that be identified. In respect of these, the precedent of the International Court of Justice was either not available or not wholly appropriate, having regard to the new and novel aspects of the Statute of the International Tribunal in Annex VI. Reference papers comprising the Statute and Rules of the International Court of Justice and those of the European Communities' Court were made available for use of delegations (Reference Papers 1-5) since these were considered to be the most relevant precedent.

7. An exchange of views was thereafter held on the items identified by the Chairman on the recommendation of the bureau, which were: the composition of the Tribunal and its Chambers, the different officials and the precedence that would be applied in the Tribunal and the Sea-Bed Disputes Chamber, and the manner of selection of members for the Sea-Bed Disputes Chamber.

8. Consideration was thereafter given to the questions of access of entities other than States to the Tribunal and to the Sea-Bed Disputes Chamber, and advisory opinions. In each case, before the commencement of the discussions, the Chairman identified some considerations and indicated some issues which could be relevant in respect of the items. In this regard at the request of of the Special Commission extracts of the Chairman's statements were made available as Conference Room Papers (LOS/PCN/SCN.4/1984/CRP.3-5). Two additional matters which were referred to in the course of the discussions are the question of prompt release of vessels and crew (art. 292) and preliminary proceedings (art. 294). Seven meetings in all were devoted to substantive discussions.

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9. The Secretariat was requested to prepare draft procedural rules for the Tribunal, taking into account the discussions during the second session. In doing so it is to use the Rules of Court of the International Court of Justice as the most appropriate guide. When preparing the draft rules, the Secretariat is also to examine the experience of the International Court of Justice so as to avoid the difficulties that had arisen in the practice of the Court on procedural matters. Furthermore, it is to be borne in mind that the draft rules should as far as possible expedite proceedings, encourage the use of the Tribunal by States and others, and minimize costs of the Tribunal and to the parties in any case.

10. The Special Commission also decided that at the resumed session in 1984 it would concentrate its attention on the draft rules prepared by the Secretariat which are to be circulated in advance of the resumed session. The Special Commission intends to utilize every possible opportunity presented to it at the resumed session for the next stage of its work, the primary focus of which is a detailed examination of the draft rules to be carried out at informal meetings on the basis of which an attempt would be made to finalize the draft rules, together with recommendations to be presented to the meeting of States Parties.

UNITED NATIONS

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UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

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LOS/PCN/L.12
4 September 1984

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Geneva, 13 August - 5 September 1984

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. In addition to the documents before it at the Second Session (Kingston, 19 March - 13 April 1984) Special Commission 4 had before it:

- LOS/PCN/SCN.4/L.1 dated 10 July 1984

  The Chairman's Summing Up of the Discussions at the second session.

- LOS/PCN/SCN.4/WP.2

  Draft Rules of the Tribunal dated 27 July 1984 - (Prepared by the Secretariat).

2. In organizing its work the Special Commission approved the Chairman's suggestions which were based on the recommendations of the Bureau. The Commission decided to commence a first reading, article by article, of the Draft Rules of the Tribunal. The recommendations of the Bureau and the manner of carrying out the examinations of the Draft Rules is set out in paragraph 1 of the Chairman's Summary of Discussions on Parts I and II of the Draft Rules of the Tribunal, document LOS/PCN/SCN.4/L.2.

3. The Special Commission examined the Preamble and Parts I and II (articles 1-30) at its second to ninth informal meetings. The summary of the discussions is reflected in the Chairman's Summary (LOS/PCN/SCN.4/L.2) referred to above. Thereafter the Special Commission proceeded with the examination of Part III of the Draft Rules at its ninth and subsequent informal meetings. The summary of these discussions will be reflected in an addendum to document LOS/PCN/SCN.4/L.2.

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4. Special Commission 4 will continue its article by article consideration of the draft rules at the Third Session of the Preparatory Commission. After this article by article review the Commission will consider the matters referred to in the Note at the end of document LOS/PCN/SCN.4/WP.2. It will also consider any other matters in respect of which provisions are required in the draft rules. Thereafter the Secretariat would be entrusted with the revision of the draft rules based on the discussions, the informal suggestions made by delegations during the meetings and the suggestions of a drafting nature which have been submitted to the Secretariat.

5. The Chairman expresses his appreciation to the delegations participating in the discussions for the constructive work carried out and their cooperation with the chair in the article by article review. He would also extends his thanks for the guidance extended to him by the members of the Bureau. The Chairman and the Commission are grateful to the Secretariat for the preparation of the Draft Rules of the Tribunal which have served as a useful basis for carrying out the Special Commission's deliberations on this important matter.

UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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LOS/PCN/L.17
2 April 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Third session
Kingston, Jamaica
11 March-4 April 1985

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. In addition to the documents before it in 1984, the Special Commission had before it the following:

- LOS/PCN/SCN.4/L.2/Add.1
  The Chairman's summary of discussion on Part III, Sections A and B, of the Draft Rules of the Tribunal

- LOS/PCN/SCN.4/WP.2/Add.1
  on the prompt release of vessels and crew

- LOS/PCN/SCN.4/WP.3
  Table of concurrence

- LOS/PCN/SCN.4/1985/CRP.6
  Suggested redraft by the secretariat of draft article 62, paragraph 3

- LOS/PCN/SCN.4/1985/CRP.7
  Suggested redraft by the secretariat of draft article 79, paragraph 4

- LOS/PCN/SCN.4/1985/CRP.8
  Statement by the Special Representative of the Secretary-General for the Law of the Sea on privileges and immunities of the Tribunal

- LOS/PCN/SCN.4/1985/CRP.9
  Statement by the Chairman of the Special Commission on privileges and immunities of the Tribunal

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- LOS/PCN/SCN.4/1985/CRP.10
  Suggested redraft by the secretariat of draft article 84, paragraphs 2, 3 and 4

- LOS/PCN/SCN.4/CRP.11
  Explanatory Statement by the Secretary on Supplement to the Draft Rules of the Tribunal on the Prompt Release of Vessels and Crew (LOS/PCN/SCN.4/WP.2/Add.1)

2. In organizing its work the Special Commission decided, in accordance with the recommendations of its Bureau, that at the third session of the Preparatory Commission, it should continue its article by article examination of the Draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.2) and that, in so doing, it should employ the same method of work that had proved appropriate when the first part of the Draft Rules was being examined (cf. relevant decisions contained in document LOS/PCN/SCN.4/L.2 and Add.1).

3. The Special Commission examined Part III, Section C, Subsections 2-5 (articles 47-82) of the Draft Rules of the Tribunal at its first to tenth meetings of the current session. A résumé of the discussions of articles 47-82 is given in the Chairman's summary (LOS/PCN/SCN.4/L.3).

4. In the course of the examination of Subsection 2, dealing with the representation of parties, attention focused on the question of privileges, immunities and facilities of agents, counsel, advocates, witnesses and experts of parties before the Tribunal. The Convention on the Law of the Sea does not have specific provisions on the question.

5. In that connection, the secretariat was requested to provide information on the legal foundations and the current practice of the International Court of Justice and other international courts with regard to these privileges, immunities and facilities. At the ninth meeting of the Special Commission, the Special Representative of the Secretary-General provided detailed information on those issues which the Special Commission considered extremely useful for its further work. There was widespread agreement in the Special Commission that it did not appear to be possible to deal with the privileges, immunities and facilities in the Rules of the Tribunal, because it was argued that the Tribunal, under article 16 of its Statute, adopted its own rules and could moreover amend them at any time without the consent of the States Parties which had to provide the privileges and immunities. It was agreed that a suitable recommendation would therefore have to be made in the report to the meeting of States Parties in accordance with paragraph 10 of Resolution I, so that it can take the necessary action in this connection.

6. The Special Commission also decided that the above matters would have to be discussed at a later stage of its work. Since the agenda of Special Commission 4 included the items: headquarters agreement, and agreements concerning privileges and immunities, they could be taken up in that context.

7. The Special Commission proceeded with the examination of Part III, Section D of the Draft Rules, dealing with incidental proceedings, at its tenth to twelfth meetings of this session. It discussed Subsections 1 and 2 (articles 83-89). The summary of these discussions will be reflected in an addendum to document LOS/PCN/SCN.4/L.3.

8. In organizing its work for the summer meeting in 1985, the Special Commission approved the proposal made by the Chairman on the recommendation of the bureau. Accordingly, it will continue its consideration, article by article, of the Draft Rules and the supplement thereto dealing with the prompt release of vessels and crew as contained in documents LOS/PCN/SCN.4/WP.2 and Add.1. The Commission will next discuss those matters for which the Draft Rules do not as yet make provision and to which reference is made in the Note at the end of document LOS/PCN/SCN.4/WP.2, i.e. provisions covering cases where parties to a dispute are international organizations, in accordance with Annex IX of the Convention (referred to in article 305, paragraph 1(f) of the Convention) consortia or other entities, whose components are of more than one nationality, whether such components be other consortia or natural or juridical persons.

9. In preparation for the summer meeting of 1985 and taking account of the discussions on those matters at the Second Session of the Preparatory Commission (Kingston, 19 March to 13 April 1984), the secretariat has been requested to prepare a list of issues on which it requires guidance from the Special Commission to formulate the appropriate provisions to cover such cases.

10. The Special Commission will also consider any other matters in respect of which provisions are required in the Draft Rules. Thereafter the Secretariat will be entrusted with the revision of the draft rules based on the discussions, the informal suggestions made by delegations during the meetings and the suggestions of a drafting nature which have been submitted to the secretariat.

11. In considering its further work, Special Commission 4 requested the secretariat to provide information concerning the items on its agenda which cannot be conclusively or exhaustively dealt with in the absence of a definite position concerning the seat of the Tribunal. Information was also requested as to the time needed to establish the headquarters of the Tribunal and to equip it so that it would be fully functional immediately after the election of the judges, which is to be carried out by the meeting of States Parties convened in accordance with article 4 of Annex VI to the Convention. There was agreement that those problems could be considered after the Special Commission had received the information from the secretariat.

12. The Chairman expressed his gratitude to delegations for their constructive approach and their co-operation. He also offered thanks

to the members of the Bureau, Dr. Antonio-José Uribe-Portocarrero of Colombia, Dr. Theodore Halkiopoulos of Greece, Mr. Jorge Coquia of the Philippines and Mr. Elfatih Abdalla Yousif of Sudan for their competent advice and assistance. The Chairman also expressed his and the Commission's appreciation to the Secretary of the Special Commission, Mr. Gritakumar Chitty and to Mrs. Gertrude Ejezie and the other members of the secretariat for the expertise they have shown in preparing the various draft articles and background papers, notably the information on privileges, immunities and facilities, which greatly facilitated the Special Commission's work.

UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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3 September 1985

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Geneva, 12 August - 4 September 1985

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. In addition to the documents before it at its third session held in Kingston, 11 March - 4 April 1985, the Special Commission had before it the following:

- LOS/PCN/SCN.4/1985/CRP.12
  Suggested redraft by the secretariat of draft article 98

- LOS/PCN/SCN.4/1985/CRP.13
  Suggested redraft by the secretariat of draft article 108

- LOS/PCN/SCN.4/1985/CRP.14
  Suggested redraft by the secretariat of draft articles 110-112

2. On the recommendation of its Bureau concerning the organization of its work, the Special Commission decided that at the current meetings of the Preparatory Commission it should continue its article by article examination of the Draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.2) employing the same method of work that had proved appropriate for examination of the previous parts of the Draft Rules (cf. relevant decisions contained in document LOS/PCN/SCN.4/L.2 and Add.1).

3. The Commission also decided that after concluding the examination of Part III of the Draft Rules, it would examine the Draft Rules for the prompt release of vessels, contained in document LOS/PCN/SCN.4/WP.2/Add.1, which had been prepared by the Secretariat. In that connection it had before it

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document LOS/PCN/SCN.4/1985/CRP.11 which was an explanatory statement by the Secretary on this working paper. The Commission decided that it would next have a preliminary exchange of views on the question of the access to the Tribunal by entities other than States. In that connection it had before it the Chairman's explanatory statement in document LOS/PCN/SCN.4/1984/CRP.4.

4. Having approved its programme of work, the Special Commission during its 1st-6th meetings at the current session, examined Part III, Section D, Subsections 3-7, Sections E to G (articles 90-113) of the Draft Rules. The Commission at its 11th and 12th meetings had a further exchange of views on the re-drafts of articles 98, 108 and 110-112 suggested by the Secretariat in documents LOS/PCN/SCN.4/1985/CRP.12-14. The Chairman's summary of these discussions is reflected in LOS/PCN/SCN.4/L.4.

5. At its 7th-10th meetings the Special Commission proceeded with its examination of the Draft Rules for the prompt release of vessels and crew (document LOS/PCN/SCN.4/WP.2/Add.1). At its 12th meeting it considered the question as to where these Draft Rules would be located in the text and it was agreed that it should be located in a new subsection immediately following subsection 1 of Section D in Part III of the Rules, i.e. after Rule 88. The summary of the discussions on the prompt release of vessels and crew will be reflected in an addendum to document LOS/PCN/SCN.4/L.4.

6. There was insufficient time to discuss the question of access to the Tribunal by entities other than States Parties.

7. In organizing its work for the fourth session in 1986 the Special Commission approved the proposal by the Chairman, on the recommendation of the Bureau, that first, the Special Commission would discuss outstanding matters that were to be reviewed at the current meetings, viz. the question of access by entities other than States. Thereafter the Commission would continue its article by article examination of Parts IV and V of the Draft Rules of the Tribunal; it would also examine any other matters in respect of which provisions are required in the Draft Rules. Thereafter the Secretariat is to be entrusted with the revision of the Draft Rules of the Tribunal including the rules on prompt release of vessels and crew. This would be done on the basis indicated in LOS/PCN/L.17, para.10. The Commission would then have to decide which item on its agenda should be taken up next. The items were listed by the Chairman in paragraph 3 of document LOS/PCN/SCN.4/WP.1.

8. The Special Commission was informed by the Secretariat that it was continuing its endeavours to obtain detailed information on the planning and execution of facilities for international courts or tribunals that had recently been established which were not within the aegis of the United Nations, since there had been no recent experience of courts or tribunals being established under the aegis of the United Nations. Upon obtaining that information through the appropriate departments of the United Nations, the Secretariat would attempt to draw upon that experience in providing a response to the request made to the Secretariat during the third session. With reference to the experience of the United Nations in the establishment of new institutions the provision of fully functional facilities has not depended on or in any way been limited by lengthy processes such as the erection of permanent buildings. Temporary arrangements were made in most cases and the institutions were functional within six to twelve months in

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temporary facilities provided by the host country. This conformed to the requirements for the recruitment of staff. The planning construction and establishment of specially designed facilities usually took in the region of five to seven years during which the temporary facilities were utilized.

9. The Chairman expressed his appreciation for the continued co-operation that he had enjoyed from delegations and for the workmanlike manner in which the Special Commission had conducted its discussions. He also expressed his sincere gratitude to the members of the Bureau for their support to the chair and their assistance and advice in the organization of the work of the Special Commission. The Chairman also offered his and the Commission's gratitude to the Secretary of the Commission, Mr. Gritakumar Chitty and to Mrs. Gertrude Blake and the other members of the Secretariat for their continued assistance and for the expertise they have shown in preparing the working materials of the Commission.

UNITED
NATIONS

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UNITED NATIONS
CONVENTION ON THE
LAW OF THE SEA

Distr.
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3 September 1985
ARABIC AND ENGLISH ONLY

PREPARATORY COMMISSION FOR THE INTERNATIONAL
SEA-BED AUTHORITY AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Geneva, 12 August - 4 September 1985

STATEMENT TO THE PLENARY BY THE CHAIRMAN
OF SPECIAL COMMISSION 4 ON THE PROGRESS
OF WORK IN THAT COMMISSION

Corrigendum

Page 2, paragraph 6

Delete the word "Parties" at the end of the sentence.

Page 2, paragraph 7, line 11

Insert the following sentence after the words "basis indicated in LOS/PCN/L.17, para.10.":

When considering the further work of the Special Commission a proposal was made to limit interventions, to adopt a time-table and to establish appropriate modalities to expedite the examination of the revised draft rules.

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UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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10 April 1986

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Fourth session
Kingston, Jamaica
17 March-11 April 1986

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. In addition to the documents before it in 1985, the Special Commission had before it the following:

- LOS/PCN/SCN.4/L.4/Add.1

  The Chairman's summary of discussion on the Draft Articles on the Prompt Release of Vessels and Crews (LOS/PCN/SCN.4/WP.2/Add.1)

- LOS/PCN/SCN.4/1986/CRP.15

  Suggested redraft by the Secretariat of draft articles 4, paragraph 1, and 9, paragraph 5

- LOS/PCN/SCN.4/1986/CRP.16

  Suggested redraft by the Secretariat of draft article 129, paragraph 1

- LOS/PCN/SCN.4/1986/CRP.17

  Suggested redraft by the Secretariat of the Preamble

- LOS/PCN/SCN.4/1986/CRP.18

  Suggested redraft by the Secretariat of draft articles 64, paragraph 2, and 84, paragraph 1

- LOS/PCN/SCN.4/CRP.19

  Preliminary Information on the Establishment of Facilities for International Courts and Tribunals. Prepared by the Secretariat.

/...

2. In organizing its work the Special Commission decided, in accordance with the recommendations of its Bureau, that at the fourth session of the Preparatory Commission, it should continue its article by article examination of the Draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.2) and that, in so doing, it should employ the same method of work that had proved appropriate when the previous parts of the Draft Rules were being examined (cf. relevant decisions contained in document LOS/PCN/SCN.4/L.2 and Add.1).

3. The Special Commission examined Parts IV and V (arts. 114-134) of the Draft Rules of the Tribunal at its first to eighth meetings of the current session. A resumé of the discussions of Parts IV and V is given in the Chairman's summary (LOS/PCN/SCN.4/L.5).

4. At its ninth to eleventh meetings the Special Commission reached agreement on those provisions of the Draft Rules on which it had deferred discussion. Agreement was reached as to the reformulation of the preamble as well as articles 15, 64 and 84. In addition, the Special Commission discussed provisions covering cases where parties to a dispute are international organizations, in accordance with Annex IX of the Convention (referred to in article 305, paragraph 1(f) of the Convention), consortia or other entities, whose components are of more than one nationality, whether such components be other consortia or natural or juridical persons.

In this connection special attention was given to problems arising from the appointment of ad hoc members of the Tribunal and its chambers by the above-mentioned international organizations or consortia. The Special Commission discussed guidelines for Draft Rules in cases where an international organization is an applicant before the Tribunal or its chambers and the Tribunal proprio motu needs to examine, or the respondent claims the right to raise, the question of the locus standi of the international organization. The summary of these discussions will be reflected in an addendum to document LOS/PCN/SCN.4/L.5.

5. On the basis of a report of the Secretariat with preliminary information on the establishment of international courts and tribunals which examined their experience concerning the establishment of their headquarters, notably as regards the time period needed to design and construct these headquarters, the Special Commission at its eleventh and twelfth meetings discussed the question of the future seat of the Tribunal for the Law of the Sea. At the conclusion of the discussions, the Chairman indicated that there had been a useful exchange of views and that the Commission, in view of the legal and practical problems involved, will continue its consideration of this issue at forthcoming summer meetings of the Preparatory Commission. A summary of these discussions will be reflected in the addendum to the Chairman's summary of discussion (addendum to document LOS/PCN/SCN.4/L.5).

6. The Special Commission requested the Secretariat to continue to study the question of the preparation of the site of the Tribunal, related buildings and other facilities with cost implications, and to report thereon. For this purpose, the Secretariat is requested to examine:

(a) the precise nature of the site, buildings, equipment and other facilities that are required;

(b) the cost implication with related periods for the different phases of the project, such as site selection, preparation of the plan, construction of the physical plant, installation of equipment and other facilities, and recruitment of staff so as to ensure a fully functional facility at the requisite time. The Secretariat was also requested to continue its consultation with the authorities of the Federal Republic of Germany and to report on the facilities planned and the progress made in Hamburg.

7. Concerning the organization of work at the summer meetings the Special Commission agreed as follows:

During the summer meetings the Special Commission should examine the revision of the Draft Rules. To this end the Secretariat has been requested to prepare that revision sufficiently in advance of the beginning of these meetings. The revision should be based on the discussions, the informal suggestions made by delegations and the suggestions of a drafting nature submitted to the Secretariat.

In considering the revised Draft Rules the Special Commission should employ a method of work that ensures an expeditious examination focused on the substantive problems while including a resumption of the discussion of matters on which the Special Commission has already reached agreement. For this purpose the Bureau of the Special Commission should, at the beginning of the summer meetings, put forward a relevant proposal.

After completing the examination of the revised Draft Rules the Special Commission should consider as the next item of its agenda the Draft Headquarters Agreement, this being one of the most important items on the Special Commission's agenda, since that agreement will create the essential juridical prerequisites for the undisturbed functioning of the Tribunal in the host country.

For this purpose the Secretariat has been requested to prepare for the summer meetings, a reference document which would analyse existing precedent and practice, with special emphasis on the International Court of Justice and other international courts and tribunals, and the relevant international conventions and resolutions as listed in document LOS/PCN/SCN.4/WP.1 of 12 March 1984, and to present draft texts for each issue, based on the most relevant precedent.

At the summer meetings the Special Commission will continue its discussions on the problems relating to the seat of the Tribunal.

8. The Chairman thanked the delegations for their constructive approach to the discussions and their co-operation. He also expressed his appreciation to the members of the Bureau for the helpful guidance they had given him. The Chairman and the Commission are grateful to the Secretariat for the valuable services it has rendered, especially in preparing the Draft Rules and the various redrafts, thus greatly facilitating the Special Commission's deliberations.

UNITED NATIONS

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PREPARATORY COMMISSION FOR
THE INTERNATIONAL SEA-BED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 11 August-5 September 1986

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. In addition to the documents before it at the fourth session in Kingston, the Special Commission had before it the following:

(a) LOS/PCN/SCN.4/L.5/Add.1, addendum to the Chairman's summary of discussions on the draft rules of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.2/Rev.1/Part I, revised rules of the International Tribunal for the Law of the Sea (part I, containing articles 1-93). Prepared by the Secretariat;

(c) LOS/PCN/SCN.4/1986/CRP.20, suggested redraft by the Secretariat of draft article 1 of the revised draft rules of the Tribunal;

(d) LOS/PCN/SCN.4/WP.4, headquarters agreement and related instruments on privileges and immunities. Prepared by the Secretariat.

2. In organizing its work, the Special Commission decided, in accordance with the recommendations of its Bureau, that at the current meetings of the Preparatory Commission it should continue its examination of the draft rules of the Tribunal as revised by the Secretariat (contained in document LOS/PCN/SCN.4/WP.2/Rev.1/Parts I and II), employing a method of work that would permit the expeditious examination of the revised draft rules focused on substantive problems while excluding a resumption of the discussion of matters on which the Special Commission had already reached agreement. This entailed the examination of the revised draft rules section by section and subsection by subsection where so divided.

3. The examination of the revised draft rules followed the Chairman's suggestions based on the recommendations of the Bureau, that:

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(a) The discussion should focus on those rules that were new and had been formulated as a result of a general discussion on the subject;

(b) Proposals of a drafting nature intended to clarify the text without affecting the substance or for harmonization of the different languages should be brought to the attention of the Secretariat;

(c) Changes of a substantive nature should only be proposed if the draft article was found to be seriously deficient and unacceptable and if the change proposed was likely to achieve the widespread approval of the Special Commission.

4. At its 33rd to 42nd meetings, the Special Commission examined parts I-IV (preamble and articles 1-93) of the revised draft rules of the Tribunal. The discussions on parts I-III have been reflected in the Chairman's summary of discussions (document LOS/PCN/SCN.4/L.7). The discussions on part IV of the revised draft rules will be reflected in an addendum. Prior to the consideration of each section or subsection, the Secretary informed the Special Commission of the principal changes that had been made when compared with the earlier working paper (LOS/PCN/SCN.4/WP.2). He also indicated the rationale drawn from the earlier discussions, which formed the basis for the formulation and also the implications of the revision on the provision in question and of any related provisions.

5. The Secretary introduced the working paper concerning headquarters agreements, in particular in relation to the question of privileges, immunities and facilities to be accorded by the host country of the Tribunal's seat (document LOS/PCN/SCN.4/WP.4).

6. The Secretary provided an oral report concerning the facilities for the future seat of the Tribunal. He indicated that in the short time available between the fourth session and the summer meetings the Secretariat had addressed communications and received responses from some international tribunals and courts. In response to its request, the Secretariat had also received information from the authorities of the Federal Republic of Germany concerning arrangements in Hamburg. However, those responses did not provide sufficient information to prepare a substantial working paper. The Secretariat would continue its efforts to obtain further particulars from the different sources and would present the working paper to the Special Commission at its fifth session.

7. At its fourth session, the Special Commission decided that, in order to facilitate discussions on the problems relating to the seat of the Tribunal, the Chairman should carry out informal consultations. The Chairman reported to the Special Commission that he had began informal consultations on an informal proposal that the Bureau of the Special Commission considered to be a basis for a possible compromise. He indicated that several regional and interest groups, as well as individual delegations, were not in a position to express a view on the proposal at the current time and that he should continue his informal consultations during the fifth session. The Special Commission approved the suggestion for continued consultations on the matter.

8. Concerning the organization of work for its fifth session, the Special Commission approved the Chairman's proposals, on the recommendation of the Bureau, that:

(a) The Special Commission should first examine the issues raised in the working paper concerning headquarters agreements (document LOS/PCN/SCN.4/WP.4) to provide the necessary guidance to the Secretariat in preparing a draft headquarters agreement for consideration by the Special Commission;

(b) The Special Commission should take up document LOS/PCN/SCN.4/WP.2/Rev.1/Part II containing the remaining revised draft rules of the Tribunal, which should be prepared by the Secretariat sufficiently in advance to enable delegations to examine them at the fifth session; it would also take up the suggested compromise proposals to be presented by the secretariat for several provisions of LOS/PCN/SCN.4/WP.2/Rev.1/Part I on which there was a divergence of views;

(c) The Special Commission should examine the draft headquarters agreement to be prepared by the Secretariat as soon as it has completed its consideration of the revised draft rules;

(d) The Chairman should carry out further informal consultations concerning questions relating to the seat of the Tribunal, with a view to arriving at a generally acceptable understanding within the Special Commission.

9. The Chairman expressed thanks to delegations for the constructive discussions and the co-operation extended to the chair. He also expressed appreciation to the members of the Bureau for their continued advice and guidance. He also expressed his own gratitude and that of the Commission to the Secretariat for its valuable services and particularly in the preparation of the revised draft rules and other working papers, which had greatly facilitated the Commission's deliberations.

UNITED NATIONS

LOS

UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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14 April 1987

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Fifth session
Kingston, Jamaica
30 March-16 April 1987

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the Fifth Session of the Preparatory Commission in Kingston, the Special Commission had before it the documents from previous sessions, in particular, LOS/PCN/SCN.4/WP.4, on the question of headquarters agreements and related instruments on privileges and immunities prepared by the Secretariat. It also had before it:

(a) LOS/PCN/SCN.4/L.7/Add.1 - the addendum to the Chairman's Summary of Discussions on Part I of the Revised Draft Rules of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.2/Rev.1/Part II - the remainder of the Revised Rules for the International Tribunal for the Law of the Sea (containing arts. 94-140), prepared by the Secretariat;

(c) LOS/PCN/80 - letter from the Chairman of the delegation of the Federal Republic of Germany to the Special Representative of the Secretary-General for the Law of the Sea, concerning building facilities for the Tribunal in Hamburg; and

(d) LOS/PCN/SCN.4/L.8 - Second Report of the delegation of the Federal Republic of Germany on practical arrangements for the installation of the Tribunal at Hamburg.

2. In accordance with the recommendations of its Bureau, the Special Commission had decided at the previous session of the Preparatory Commission to organize its work at the current session by first examining the issues raised in the working paper concerning headquarters agreements, document LOS/PCN/SCN.4/WP.4, so as to provide the necessary guidance to the Secretariat in preparing a draft for a headquarters agreement for consideration by the Special Commission. It had decided thereafter to take up the consideration of document LOS/PCN/SCN.4/WP.2/Rev.1/Part II containing the remaining Revised Draft Rules of the Tribunal which had been prepared by the Secretariat.

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In examining the Revised Draft Rules, it had decided to employ a method of work that would permit the expeditious examination of the drafts, focusing on substantive problems while excluding a resumption of the discussion on matters on which there had already been agreement within the Special Commission. The Chairman was also to carry out further informal consultations concerning the questions relating to the seat of the Tribunal with a view to arriving at a generally acceptable understanding within the Special Commission.

3. The examination of the subject of headquarters agreements and related privileges and immunities was carried out on the basis of the working paper prepared by the Secretariat. That working paper, LOS/PCN/SCN.4/WP.4, identified the issues most relevant to the question which were highlighted by the Secretary who explained the issues which a discussion would be useful, particularly to the Secretariat in preparing a draft headquarters agreement. The working paper provided the basis for discussion which were carried out at the 43rd through 45th meetings. The discussions on this subject are reflected in the Chairman's Summary of Discussions (LOS/PCN/SCN.4/L.9).

4. The Special Commission thereafter took up the balance of the Revised Draft Rules of the Tribunal (Rules 94-140) contained in LOS/PCN/SCN.4/WP.2/Rev.1/Part II. The Secretary identified the main changes in the Revised Rules, identifying the motives and rationale for changing the original formulation as contained in the previous Draft (LOS/PCN/SCN.4/WP.2) where he identified the thrust of the earlier discussions which were the basis for the new text. Where new provisions had been included, he drew attention to the bases for such provisions. The examination was carried out section by section and subsection by subsection, where so divided. This examination followed the procedure that had been approved for the consideration of the first part of the Revised Draft Rules, LOS/PCN/SCN.4/WP.2/Rev.1/Part I. The Commission carried out a discussion of Part IV, Section D, Subsection 3 through Part V, Section C, Subsection 2, which is articles 94 through 128 of the Revised Draft Rules, at its 46th through 51st meetings.

5. At the beginning of the Fifth Session the Special Commission agreed that the Chairman should continue informal consultations on matters relating to the seat of the Tribunal.

6. For this purpose the Chairman consulted the Chairman of the Group of 77, the chairmen of regional groups and a number of interested delegations, including the delegation of the Federal Republic of Germany. It became clear in these informal consultations that divergent views continue to be held on how to solve the problems relating to the seat of the Tribunal.

7. The delegation of the Federal Republic of Germany reaffirmed its position as set out in the letter addressed by the head of the delegation of the Federal Republic of Germany to the Special Representative of the Secretary-General for the Law of the Sea dated 9 February 1987 (document LOS/PCN/80) and in the Second Report on Practical Arrangements for the Installation of the International Tribunal for the Law of the Sea at Hamburg (document LOS/PCN/SCN.4/L.8). In that document the Government reaffirmed its particular interest in the establishment of the International Tribunal for the Law of the Sea in the Free and Hanseatic City of

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Hamburg and expressed the readiness to erect the buildings for the Tribunal at its own expense and to make it available in accordance with the international practices that have evolved in connection with the provision of premises for United Nations bodies.

8. In the event that the International Tribunal for the Law of the Sea is established before completion of the buildings envisaged for it, the Federal Republic of Germany would ensure adequate temporary accommodation for the Tribunal in Hamburg.

9. The position of the Federal Government on the requirement laid down by the Law of the Sea Conference in connection with the decision on the site of the Tribunal of 24 August 1981 is reflected in paragraphs 11 and 12 of the Second Report on Practical Arrangements for the Tribunal at Hamburg (document LOS/PCN/SCN.4/L.3).

10. The Chairman of the Group of 77 had indicated that the Group considered the issues relating to the seat of the Tribunal and had established a working group which had prepared a draft letter from the Chairman of the Group of 77 to the Chairman of the Preparatory Commission setting out the views of the Group on this question. The intention was to have this draft letter discussed at one of the next meetings of the Group.

11. In the consultations of the Chairman of the Special Commission with a number of interested delegations which are not members of the Group of 77, their appreciation was expressed for the practical arrangements so far made by the Government of the Federal Republic of Germany for the establishment of the Tribunal in Hamburg.

12. However, a number of other delegations voiced concern at the fact that the Federal Republic of Germany had not so far indicated in any way that it will accede to the Convention in the foreseeable future or, at any rate, before the entry into force of the Convention. In this connection these delegations pointed out that the decisions of the Law of the Sea Conference on the sites of the Authority and the Tribunal were taken subject to the requirement that the States specified should have ratified the Convention by the time of its entry into force and should remain parties to it thereafter. This understanding of the Law of the Sea Conference is reflected in the introductory note to the draft Convention of 28 August 1981 (A/CONF.62/L.78) and paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea.

13. These delegations took the view that if by the receipt of the 60th instrument of ratification of or accession to the Convention the Federal Republic of Germany had not acceded to it the Preparatory Commission must take the necessary decisions that would enable it to make all practical arrangements for the establishment of the Tribunal in a State that has ratified the Convention or acceded to it.

14. Some other delegations took the view that this proposal should be amended by adding in the opening conditional clause after the words "had not acceded to it" the words "or signified its intention to do so before the entry into force of the Convention". It was proposed that these arrangements should be incorporated in the report containing recommendations of the Preparatory Commission to the Meeting of States Parties to be convened in accordance with Annex VI, Article 4 of the Convention, so that all legal requirements would be met that must be fulfilled in connection with the implementation of the understanding reached when the decision on the seat of the Tribunal was taken.

15. Other delegations were of the view that it was premature at this point in time for the Preparatory Commission to make contingency arrangements in the event that the Federal Republic of Germany does not accede to the Convention by the time it enters into force.

16. They pointed out that the Convention would presumably not enter into force before two or three years from now or even later. They also drew attention to the legal aspects, namely, that it is laid down in Annex VI, Article 1 of the Convention that the seat of the Tribunal shall be in the Free and Hanseatic City of Harburg in the Federal Republic of Germany. They argued that any modifications of the Convention that might be required could of course be made only after its entry into force in accordance with the amendment procedures prescribed in the Convention.

17. The Chairman expressed the hope that in essence this correctly reflected the positions of those delegations that have so far expressed themselves on the matter. He added that there were an appreciable number of delegations he had not yet been able to consult on this matter or who were yet to form a definitive opinion. The Chairman concluded that there still was a wide range of views on this problem.

18. The Bureau recommended and the Special Commission decided that its Chairman should continue his informal consultations on this problem during the summer meetings with a view to finding a solution that was generally acceptable to the Preparatory Commission.

19. The Bureau of the Special Commission also made the following recommendations concerning the organization of its work at the summer meetings of the Fifth Session.

(a) At the beginning of the summer meetings it should continue the examination of the remaining articles of the Revised Draft Rules of the Tribunal which it had been unable to take up during this spring session, viz. Sections D and E of Part V dealing with the Sea-Bed Disputes Chamber, and Part VI concerning Advisory Proceedings. After that delegations would be given the opportunity to raise any other issue of special concern to them in connection with the Revised Draft Rules of the Tribunal. This would be consistent with the opportunity given to them on completion of the first article by article consideration of the Draft Rules, when a number of delegations had made suggestions of general interest. Some delegations had already handed the Secretariat written suggestions on various articles of the Revised Draft Rules, including those discussed at last year's summer meetings in New York. These delegations would be given an opportunity to explain their proposals.

(b) After that the Special Commission would commence the discussion of the Draft Headquarters Agreement for which the Secretariat was requested to complete the draft as early as possible. That draft should be modelled on the headquarters agreements so far concluded with the host countries of the International Court of Justice and other international courts and tribunals as well as by the United Nations and its specialized agencies, account being taken of past experience in the application of such agreements. In working out the provisions on the privileges, immunities and facilities of the Tribunal, the parties to disputes before it and other persons staying in the host country in connection with the activities of the Tribunal, account should be taken of the trends of the discussions in the Special Commission on the issues listed in the working paper (LOS/PCN/SCN.4/WP.4).

After examining the Draft Headquarters Agreement the Special Commission would take up the consideration of a draft legal instrument embodying the privileges, immunities and facilities to be accorded to the Tribunal and the persons required for its functioning outside the host country. In all probability the Special Commission would not be able to deal with this until the Sixth Session of the Preparatory Commission in 1983.

(c) Another task of the Special Commission during the forthcoming summer meetings will be to continue informal consultations on those problems that are related to the future seat of the Tribunal with a view to coming to a generally acceptable understanding.

20. The Chairman expressed his appreciation to the delegations whose committed and constructive efforts had made it possible to achieve further progress in fulfilling the mandate entrusted to the Commission.

21. He also offered thanks to the members of the Bureau, Dr. Theodore Chalkiopoulos of Greece, Dr. Antonio-José Uribe-Portocarrero of Colombia, Justice George Coquia of the Philippines and Mr. Achol Deng of Sudan for their continued guidance and

co-operation. He extended his own gratitude along with that of the Commission to the Secretariat, headed by the Special Representative of the United Nations Secretary-General for the Law of the Sea, Satya Nandan, which again gave the Commission every assistance and support it needed and which ensured excellent working conditions.

The Chairman offered special thanks to the Secretary of the Special Commission, Mr. Gritakumar Chitty, for the preparation of the second part of the Revised Draft Rules of the Tribunal, which had again greatly facilitated the Commission's deliberation. He also expressed appreciation for the valuable assistance of Mr. Jacob Enoch, Mr. Per Sevastik and Grace Sestozo to the work of the Special Commission.

UNITED NATIONS

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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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20 August 1987

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 27 July-21 August 1987

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. During the summer meetings of the fifth session of the Preparatory Commission, the Special Commission had before it the documents from previous sessions, in particular LOS/PCN/SCN.4/WP.2/Rev.1 (Parts I and II) on the revised draft Rules of the Tribunal for the Law of the Sea prepared by the Secretariat. It also had before it the following documents:

(a) LOS/PCN/SCN.4/WP.5 (Part I), the draft headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany prepared by the Secretariat;

(b) LOS/PCN/SCN.4/1987/CRP.22, a suggested redraft of articles 89 to 91 and 93 (LOS/PCN/SCN.4/WP.2/Rev.1 (Part I) submitted by the delegation of the Union of Soviet Socialist Republics;

(c) LOS/PCN/SCN.4/L.9/Add.1, the addendum to the Chairman's summary of discussions on the revised draft Rules of the International Tribunal for the Law of the Sea held at the fifth session in Kingston, Jamaica (30 March-16 April 1987);

(d) LOS/PCN/L.47, statement to the plenary by the Chairman of Special Commission 4 on the progress of work in that Commission;

(e) LOS/PCN/85, a letter dated 16 April 1987 from the Chairman of the Group of 77 addressed to the Chairman of the Preparatory Commission.

2. On the recommendations of its Bureau, the Special Commission had decided at the fifth session in Kingston to organize its work at the current summer meetings in such a way that it would first continue the examination of the remaining

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articles of the revised draft Rules of the Tribunal which it had been unable to take up during the fifth session in Kingston, i.e., sections D and E of part V dealing with the Sea-Bed Disputes chamber, and part VI concerning advisory proceedings. The Commission had decided that after completing the examination of the revised draft Rules of the Tribunal delegations would be given an opportunity to raise any other issue of special concern to them in connection with these revised draft Rules.

3. Subsequent to this the Special Commission was to begin with the discussion of the draft headquarters agreement to be concluded between the International Tribunal for the Law of the Sea and the Federal Republic of Germany.

4. The Special Commission had requested its Chairman to hold further informal consultations concerning the questions relating to the seat of the Tribunal with a view to coming to a generally acceptable understanding.

5. The Special Commission began by examining the remaining articles of the revised draft Rules of the Tribunal, i.e. articles 129 to 140, contained in LOS/PCN/SCN.4/WP.2/Rev.1 (Part II).

6. The Secretary of Special Commission 4 identified the main changes in the revised Rules, describing the motives and rationale for changing the original formulation as contained in the previous draft (LOS/PCN/SCN.4/WP.2), where he identified the thrust of the earlier discussions which were the basis for the new text. Where new provisions had been included, he drew attention to the bases for such provisions. The examination followed the same procedure that had proved to be effective during the consideration of parts I to V of the revised draft Rules. The Commission carried out this discussion at its 52nd and 53rd meetings.

7. The discussions on this subject, which will be reflected in the Chairman's summary of discussions, will be issued shortly after the conclusion of the current summer meetings.

8. Following the consideration of the remaining articles of the revised draft Rules, delegations were free to raise any other issue of special concern to them in connection with the revised draft Rules. The delegation of the Union of Soviet Socialist Republics presented some suggestions for the redrafting of articles 89 to 91 and 93 of the revised draft Rules dealing with the prompt release of vessels and crews (LOS/PCN/SCN.4/WP.2/Rev.1 (Part I). In response to a request made by several delegations, these suggestions were circulated as a conference room paper (LOS/PCN/SCN.4/1987/CRP.22) and were discussed during the 54th, 61st and 62nd meetings of the Special Commission. These discussion will also be reflected in the Chairman's summary of discussions on the revised draft Rules of the Tribunal.

9. The Special Commission requested the Secretariat to prepare a second revision of the draft Rules in the light of the results of their examination by the Special Commission, taking into account the views expressed and the suggestions made by delegations. There was agreement in the Special Commission that it should take up this second revision, depending on the time available after the consideration of the remaining items on its agenda.

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10. During the current summer meetings, the Special Commission also took up the first part of the draft headquarters agreement to be concluded between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5 (Part I)), containing articles 1-16. The second part of the draft headquarters agreement is currently being prepared by the Secretariat and will be made available to delegations as soon as possible, at any rate well in advance of the sixth session.

11. The Special Commission has agreed that its task should be to work out a document which would include all the provisions required to assure that the Tribunal will be in a position to exercise the functions entrusted to it under the Law of the Sea Convention unhindered and under optimum conditions in the host country.

12. There was also agreement in the Special Commission that the draft headquarters agreement to be worked out by it shall be submitted to the meeting of the States Parties to be convened in accordance with annex VI, article 4, of the Convention, for its consideration.

13. The Special Commission decided to examine the draft, article by article. Prior to the consideration of each article, the Secretary explained the relevant precedent contained in headquarters agreements with international tribunals or organizations concluded earlier and the respective draft articles on which it had been patterned.

14. During its 55th to 60th and 62nd meetings, the Special Commission went through articles 1 to 13. The discussion on this subject will be reflected by the Chairman in a summary which is to be issued as a document following the conclusion of the summer meetings.

15. During the current summer meetings, the Chairman continued his informal consultations on matters relating to the seat of the Tribunal. He had been in contact with a number of interested delegations, including the delegation of the Federal Republic of Germany.

16. These consultations revealed essentially the same positions that existed at this year's session in Kingston and which are reflected in the statement to the plenary by the Chairman of Special Commission 4 on the progress of work in that Commission, as contained in document LOS/PCN/L.47 of 14 April 1987. It became clear that there is still a wide range of views on the problem related to the seat of the Tribunal. Therefore, the Bureau recommended, and the Special Commission decided, that its Chairman should continue his informal consultations on this problem during the sixth session with a view to finding a solution that would be generally acceptable to the Preparatory Commission.

17. The Chairman informed the Special Commission that the Bureau of the Special Commission has been invited by the Government of the Federal Republic of Germany and the Senate of the Free and Hanseatic City of Hamburg to visit Hamburg and Bonn from 24 to 27 August 1987. It was said in the letter of invitation that its purpose was, in particular, to enable the Bureau to consider further the staffing

and accommodation requirements of the Tribunal and to examine the suitability of the building proposed for the temporary accommodation of the Tribunal.

18. Talks with representatives of the Foreign Office and of the Ministry of Justice in Bonn are also envisaged. The Bureau expressed thanks for this invitation and decided to accept it. The Bureau was informed that similar invitations were extended to the Special Representative of the Secretary-General, Mr. Satya Nandan, and to the Secretary of Special Commission 4, Mr. Gritakumar Chitty. It is the intention of the Bureau to use the opportunity of contacts with representatives of the Government of the Federal Republic of Germany and the Senate of the Free and Hanseatic City of Hamburg also for the purpose of seeking information on what possibilities the competent authorities of the Federal Republic of Germany envisage of meeting the requirements laid down in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea by the time of entry into force of the Convention. At the beginning of the sixth session, the Bureau will inform the Special Commission about the outcome of its visit to the Federal Republic of Germany, including the progress in the preparations and planning.

19. The Bureau of the Special Commission made the following recommendations concerning the organization of its work during the sixth session:

(a) At the beginning of the sixth session, the Special Commission would continue the examination of the remaining articles of the draft headquarters agreement. Following the conclusion of this examination, the Secretariat will be entrusted with the revision of the draft in the light of the suggestions made in the course of the discussion.

(b) At an appropriate time the Special Commission would continue its deliberations on the suggestions contained in document LOS/PCN/SCN.4/1987/CRP.22 relating to the question of the procedures for the prompt release of vessels and crews.

(c) The Special Commission would also commence the discussion of the draft protocol/agreement embodying the privileges, immunities and facilities to be accorded to the Tribunal and the persons required for its functioning outside the host country. The Secretariat was requested to prepare a working paper containing a draft protocol/agreement and, in so doing, to be guided by the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946, by the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly on 21 November 1947, and by other appropriate multilateral legal instruments, taking account also of past experience in the application of these instruments. In drawing up the draft protocol/agreement, the Secretariat should also take into account the thrust of previous discussions in the Special Commission on the draft headquarters agreement.

(d) Another task of the Special Commission during the sixth session will be to continue informal consultation on those problems that are related to the future seat of the Tribunal with a view to coming to a generally acceptable solution.

20. The Chairman offered his gratitude to delegations whose sense of responsibility and constructive approach had made possible further headway during these summer meetings.

21. He also thanked the members of the Bureau, Dr. Theodore Chalkiopoulos of Greece, Dr. Antonio-José Uribe-Portocarrero of Colombia, Justice George Coquia of the Philippines and Ambassador Ashol Deng of Sudan for their valuable assistance and guidance. The Chairman also had words of gratitude for the Secretariat, headed by the Special Representative of the United Nations Secretary-General for the Law of the Sea, Mr. Satya Nandan, acknowledging the support and advice he provided and for the excellent working conditions he ensured.

22. The Chairman offered special thanks to the Secretary of the Special Commission, Mr. Gritakumar Chitty, especially for the draft headquarters agreement and for the valuable guidance he gave to delegates both during and after meetings, and he warmly thanked Mrs. Gertrude Blake, Mr. Jacob Enoch, Ms. Grace Sistoso and the other unseen helpers for their valuable assistance.

UNITED NATIONS

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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
Special Commission 4
Sixth Session
14 March-8 April 1988
Kingston, Jamaica

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the sixth session of the Preparatory Commission, the Special Commission had before it the documents from previous sessions. It also had before it the following documents:

(a) LOS/PCN/SCN.4/WP.5 (Part II), containing the remaining articles of the draft headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, prepared by the Secretariat;

(b) LOS/PCN/SCN.4/L.10, the Chairman's summary of discussions on the revised draft Rules of the International Tribunal for the Law of the Sea;

(c) LOS/PCN/SCN.4/L.11, the Chairman's summary of discussions on the draft headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(d) LOS/PCN/SCN.4/L.12, the Report of the Chairman on the visit by the Bureau of Special Commission 4 and officials of the United Nations Secretariat to the Federal Republic of Germany (24-28 August 1987);

(e) LOS/PCN/SCN.4/WP.6, the draft convention/protocol on the privileges and immunities of the International Tribunal for the Law of the Sea, prepared by the Secretariat;

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(f) LOS/PCN/SCN.4/CRP.23, suggested redraft by the Secretariat of draft article 89, paragraph 4, of the revised draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.2/Rev.1/Part I);

(g) LOS/PCN/SCN.4/CRP.24, suggested draft article for inclusion in the draft convention/protocol on the privileges and immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6), submitted by the delegation of the Federal Republic of Germany.

2. On the recommendation of its Bureau, the Special Commission had decided, at the summer meetings of the fifth session in New York, to organize its work at the current sixth session in such a way that it would first continue the examination of the remaining articles of the draft headquarters agreement.

3. At an appropriate time the Special Commission would continue its deliberations on the suggestions contained in document LOS/PCN/SCN.4/CRP.22 relating to the question of the procedures for the prompt release of vessels and crews.

4. The Special Commission would also commence the discussion of the draft protocol/agreement embodying the privileges, immunities and facilities to be accorded to the Tribunal and the persons required for its functioning outside the host country.

5. The Special Commission had requested its Chairman to hold further informal consultations concerning the questions relating to the seat of the Tribunal with a view to coming to a generally acceptable understanding.

6. The Special Commission, following the same procedure that had proved effective earlier, began by examining the remaining articles of the first part of the draft headquarters agreement (LOS/PCN/SCN.4/WP.5 (Part I)), namely articles 14-16. It thereafter examined the second part of that draft, comprising articles 17-28 and the final provisions (LOS/PCN/SCN.4/WP.5/Part II). Consideration of the preamble, which had been deferred until the reading of the articles, was also completed. This examination was carried out at the 63rd to 70th meetings.

7. The discussion on this subject will be reflected in the Chairman's summary of discussions in LOS/PCN/SCN.4/L.11/Add.1.

8. The Special Commission requested the Secretariat to prepare a revision of the draft headquarters agreement in the light of the discussions, taking into account the views expressed and the suggestions made by delegations.

9. Thereafter, the Special Commission commenced the examination of the draft convention/protocol on the privileges and immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6), prepared by the Secretariat. In examining that draft the Special Commission was in agreement that it should concentrate on the essential content of the various articles while avoiding a discussion on drafting details.

10. In the light of the discussion and suggestions made, the Secretariat will be requested to revise the draft.

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11. In introducing the draft convention/protocol the Secretary of the Special Commission referred to the explanatory note and explained that in the preparation of the working paper particular regard was had for the precedent relating to the International Court of Justice as well as that relating to the United Nations and other international organizations. He drew attention to the fact that the existing precedent was not always followed in view of the unique character of the Tribunal, bearing in mind the range of disputes that may be submitted to it as well as the diversity of the entities having access to it or entitled to participate in proceedings before it.

12. The Special Commission decided to examine the draft, article by article, and, where articles are divided into paragraphs, paragraph by paragraph. The preamble was to be taken up at the end of the discussion of the articles. Prior to the examination of each article the Secretary was to explain the content of and rationale for its provisions and to identify the relevant precedent.

13. During its 70th and 71st meetings the Special Commission discussed whether the instrument should be a convention or a protocol. It also considered articles 1-3. The discussion on this subject will be reflected by the Chairman in a summary to be prepared following the consideration of the entire draft convention/protocol.

14. During its 72nd-75th meetings the Special Commission continued its deliberations on the suggestions contained in document LOS/PCN/SCN.4/1987/CRP.22 relating to the question of the procedures for the prompt release of vessels and crews.

However, on account of the limited time, the Commission was unable to complete the discussion of these suggestions and of other proposals concerning articles 89-91 and 93 of the Draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.2/Rev.1/Part I). It was decided to continue this discussion during the summer meetings of the sixth session. After the consideration of the suggestions relating to articles 89-91 and 93 of the draft rules of the Tribunal, the Chairman will prepare a summary of those discussions.

15. At the beginning of the sixth session the Chairman gave a report on the visit of the members of the Bureau of Special Commission 4 and of officials of the Secretariat in the FRG (24-28 August 1987). This report is reproduced as document LOS/PCN/SCN.4/L.12.

16. During the current sixth session the Chairman continued his informal consultations on matters relating to the seat of the Tribunal. He was in contact with the Chairman of the Group of 77 and also with a number of interested delegations, including the delegation of the Federal Republic of Germany.

17. The Chairman of the Group of 77 stated that the position of the Group of 77 on the question of the seat of the Tribunal as expressed in the letter addressed by the Chairman of the Group of 77 to the Chairman of the Preparatory Commission (LOS/PCN/85) was valid now as before. He made known that the Group of 77 intends to discuss this question once again in one of its next meetings. He would then inform the Chairman of the Special Commission about the outcome of that discussion.

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18. The Chairman of the Special Commission conducted his consultations with interested delegations on the basis of the informal proposal of the Bureau as contained in LOS/PCN/SCN.4/1986/CRP.21. That proposal has continued to prove an appropriate basis for the discussions. The Chairman concluded from the consultations that the positions taken have drawn somewhat closer to the informal proposal of the Bureau. At the same time it must be noted that now as before divergent views are held on a number of elements of that proposal. Besides, the Chairman did not have enough time to take the matter up with all interested delegations during this session. Therefore, the Bureau recommended, and the Special Commission decided, that its Chairman should continue his informal consultations during the forthcoming summer meetings with a view to finding a solution that would be generally acceptable to the Preparatory Commission.

19. The Bureau of the Special Commission made the following recommendations concerning the organization of its work at the summer meetings of the sixth session:

(a) At the beginning of the summer meetings the Special Commission would continue its deliberations on the suggestions contained in document LOS/PCN/SCN.4/1987/CRP.22 and LOS/PCN/SCN.4/1988/CRP.23 and on other suggestions relating to the question of the procedures for the prompt release of vessels and crews.

(b) Thereafter, the Special Commission would continue the consideration of the draft convention/protocol on the privileges and immunities of the International Tribunal for the Law of the Sea. After this consideration of the draft, the Secretariat will be requested, in the light of deliberations and the views expressed during this examination, to revise the draft.

(c) The Special Commission would also commence the discussion of principles to govern relationship agreements to be concluded between the Tribunal and the United Nations, the International Sea-Bed Authority, the International Court of Justice and possibly other international institutions and organizations as well. To facilitate this, the Secretariat was requested to prepare a working paper identifying the problems that need to be considered in connection with the relationship agreements. These would include in particular the question as to the international organizations and institutions with which relationship agreements are necessary, those relationship agreements that are appropriate and the major points to be covered by such agreements.

(d) Another task of the Special Commission during the summer meetings of the sixth session will be to continue informal consultations concerning these questions that are related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

20. The Chairman expressed his gratitude and appreciation to delegations for their continued co-operation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, Dr. Antonio Jose Uribe-Portocarrero of Colombia, Dr. Theodore Haikiopoulos of Greece, Mr. Jorge Coquia of the Philippines and Dr. Achol Deng of Sudan for the helpful guidance and competent advice they had given him also during this session. The Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, /...

Mr. Satya N. Nandan, as well as the Secretary of the Special Commission, Mr. Gritakumar Chitty, to Mrs. Gertrude Blake and to Mr. Jacob Enoch as well as to the other members of the secretariat for the valuable and competent services they had again rendered to the Commission, especially in preparing and submitting the various drafts and papers.

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UNITED NATIONS

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ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
New York, 15 August-2 September 1988

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. During the summer meetings of the sixth session of the Preparatory Commission, the Special Commission had before it the documents from previous sessions. In addition, it had before it the following documents:

(a) LOS/PCN/SCN.4/L.11/Add.1, the Chairman's summary of discussions on the draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany prepared by the Secretariat;

(b) LOS/PCN/SCN.4/WP.5/Rev.1, containing the revised draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(c) LOS/PCN/SCN.4/1988/CRP.23/Rev.1, informal suggested redraft of article 89, paragraph 4 (LOS/PCN/SCN.4/WP.2/Rev.1/Part I), proposed by the Secretariat;

(d) LOS/PCN/SCN.4/1988/CRP.25, suggested redraft of article 91 (LOS/PCN/SCN.4/WP.2/Rev.1/Part I) submitted by the delegations of Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland;

(e) LOS/PCN/SCN.4/1988/CRP.26, informal suggested redraft of article 6 (LOS/PCN/SCN.4/WP.6), submitted by the delegation of Australia;

(f) LOS/PCN/SCN.4/1988/CRP.27, informal suggested redraft of article 7 (LOS/PCN/SCN.4/WP.6), submitted by the delegation of Switzerland;

(g) LOS/PCN/SCN.4/1988/CRP.28, suggested redraft of article 91 (LOS/PCN/SCN.4/WP.2/Rev.1/Part I), prepared by the Secretariat;

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(h) LOS/PCN/SCN.4/1988/CRP.29, informal suggested redraft of article 93 (LOS/PCN/SCN.4/WP.2/Rev.1/Part I), submitted by the delegation of Greece on behalf of the delegations of Belgium, Denmark, France, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland;

(i) LOS/PCN/SCN.4/1988/CRP.30, informal suggested redraft of article 90 (1) (LOS/PCN/SCN.4/WP.2/Rev.1/Part I), submitted by the delegation of Tanzania on behalf of the Group of 77.

2. On the recommendation of its Bureau, the Special Commission had decided at the sixth session in Kingston to organize its work at the current summer meetings in such a way that it would first continue its deliberations on the suggestions contained in documents LOS/PCN/SCN.4/1987/CRP.22 and CRP.23 and other suggestions relating to the procedure for the prompt release of vessels and crews. Thereafter, the Special Commission would continue the consideration of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (document LOS/PCN/SCN.4/WP.6). In the light of the discussions, the proposals made and the views expressed during that examination, the Secretariat would be requested to revise the draft. The Special Commission was also to commence the discussion of principles to govern relationship agreements to be concluded between the Tribunal and the United Nations, the International Court of Justice and the International Sea-Bed Authority and possibly other international institutions and organizations as well.

3. The Special Commission had requested its Chairman to hold further informal consultations concerning the questions relating to the seat of the Tribunal with a view to coming to a generally acceptable understanding.

4. At the beginning of the summer meetings the Special Commission decided first to continue with the examination of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6) in order to allow most interested delegations time for further consultations among themselves on the draft articles on the prompt release of vessels and crews. In examining the draft Protocol, the Special Commission employed the same procedure of an article-by-article examination of the draft on which it had agreed during the sixth session, when it had examined articles 1 to 3.

5. During its 76th to 78th meetings, the Special Commission dealt with draft articles 4 to 7 of the draft Protocol, dealing with freedom from currency restrictions, exemption from taxes and customs duties, reimbursement of duty or tax and facilities in respect of communications. As regards some of the suggestions made (LOS/PCN/SCN.4/1988/CRP.24) on these draft articles, which on account of their complexity had to be presented in writing, the Special Commission will come back to them during the next session. The Special Commission also began the discussion of draft article 8, dealing with the privileges, immunities and facilities of the members of the Tribunal.

6. The views expressed in the discussions so far on articles 1 to 3, which took place during the sixth session at Kingston, and on articles 4 to 8, which took

place at the current summer meetings, are reflected in the Chairman's summary (LOS/PCN/SCN.4/L.14).

7. During its 79th to 83rd meetings, the Special Commission continued the examination of suggestions on draft articles of the Rules of the Tribunal concerning the prompt release of vessels and crews. The Special Commission considered a compromise suggestion presented by the Secretariat (LOS/PCN/SCN.4/1988/CRP.28). The Special Commission concluded its discussion of the subject, except for the suggestions contained in documents LOS/PCN/SCN.4/1988/CRP.29 and CRP.30. It was agreed that interested delegations would consult on those two suggestions in order to arrive at compromise formulations which would be generally acceptable to the Special Commission. The discussions on the subject of prompt release will be reflected in the Chairman's summary, to be issued at the conclusion of the current meetings.

8. Due to a lack of time, the Special Commission was unable to discuss the principles governing relationship agreements to be concluded between the Tribunal and the United Nations, the International Sea-Bed Authority, the International Court of Justice and possibly other international institutions and organizations.

9. During the current summer meetings, the Chairman continued his informal consultations on matters relating to the seat of the Tribunal. He was in contact with the Chairman of the Group of 77 and with a number of interested delegations, including the delegation of the Federal Republic of Germany.

10. The Chairman of the Group of 77 stated that the latest position of the Group on the question of the seat of the Tribunal is reflected in the letter addressed by the Chairman of the Group of 77 to the Chairman of the Preparatory Commission (LOS/PCN/102). He made known that the Group of 77 has continued the consideration of the subject at the present summer meetings and he indicated that the basis for that consideration was the informal proposal of the Bureau of Special Commission 4 contained in document LOS/PCN/SCN.4/1986/CRP.21. The Group felt, however, that there was still sufficient time to formulate its position on the procedure to be followed with regard to contingency arrangements. He stated that the Group of 77 would continue to review the matter at the next session of the Preparatory Commission, with a view to making an appropriate recommendation at a later date.

11. The Chairman of the Special Commission conducted his consultations with interested delegations from all regional groups on the basis of the informal proposal of the Bureau (LOS/PCN/SCN.4/1986/CRP.21). That proposal has continued to prove an appropriate basis for the discussions. The Chairman concluded from the consultations that the positions taken have kept drawing closer together, even though divergent views continue to be held on some formulations used in the proposal. In view of the fact that a certain measure of agreement among delegations from all regional groups on essential elements of the proposal is now noticeable, the Chairman intends to convene, at an appropriate time, an informal meeting open to all interested delegations with a view to formulating a common proposal that is likely to be adopted by the Preparatory Commission.

12. The Bureau of the Special Commission made the following recommendations concerning the organization of its work at the seventh session:

(a) At the beginning of the seventh session, the Special Commission would continue the examination of the remaining articles of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea. Following the conclusion of that examination, the Secretariat would be entrusted with the revision of the draft in the light of the suggestions made in the course of the discussion.

(b) The Special Commission would also commence the discussion of principles to govern relationship agreements to be concluded between the Tribunal and the United Nations, the International Sea-Bed Authority, the International Court of Justice and possibly other international institutions and organizations as well. To facilitate this, the Secretariat would circulate the working paper that had been requested earlier, so that it would be in the hands of delegations before the beginning of the seventh session.

(c) Another task of the Special Commission during the seventh session would be to continue informal consultations on those problems related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

(d) Once the interested delegations had arrived at generally acceptable formulations with regard to the two pending suggestions relating to the prompt release of vessels and crews (LOS/PCN/SCN.4/1988/CRP.29 and CRP.30), the Special Commission would take up those suggestions with a view to their approval for inclusion in the revised draft Rules.

13. The Chairman offered his gratitude to delegations whose sense of responsibility and constructive approach had made possible further headway during the current summer meetings.

14. He also thanked the members of the Bureau, Mr. Theodore Chalkiopoulos (Greece), Mr. Antonio-José Uribe-Portocarrero (Colombia), Mr. George Coquia (Philippines) and Mr. Isam E. Abugideri (Sudan) for their valuable assistance and guidance. The Chairman also had words of gratitude for the Secretariat, headed by the Special Representative of the United Nations Secretary-General for the Law of the Sea, Mr. Satya Nandan, acknowledging the support and advice he had provided and the excellent working conditions which he ensured.

15. The Chairman offered special thanks to the Secretary of the Special Commission, Mr. Gritakumar Chitty, especially for the preparation of the revised draft Headquarters Agreement and for the valuable guidance he had given to delegates both during and after meetings, and he cordially thanked Mrs. Gertrude Blake, Mr. Jacob Enoch, Ms. Grace Sistoso and other unseen helpers for their valuable assistance.

UNITED NATIONS

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PREPARATORY COMMISSION FOR THE INTERNATIONAL SEA-BED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Seventh session
Kingston, 27 February-23 March 1989

STATEMENT TO THE PLENARY BY THE ACTING CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. The Special Commission had the following documents before it to consider during the Seventh Session of the Preparatory Commission.

(a) LOS/PCN/SCN.4/WP.6 Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (Working paper prepared by the Secretariat)

(b) LOS/PCN/SCN.4/L.13, Chairman's Summary of Discussions on the Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea. (Articles 1-8)

(c) LOS/PCN/SCN.4/1988/CRP.26, Informal suggested redraft of article 6 (LOS/PCN/SCN.4/WP.6), submitted by the delegation of Australia.

(d) LOS/PCN/SCN.4/1988/CRP.27, Informal suggested redraft of article 7 (LOS/PCN/SCN.4/WP.6) submitted by the delegation of Switzerland.

(e) LOS/PCN/SCN.4/1988/CRP.29, Informal suggested redraft of article 93 (LOS/PCN/SCN.4/WP.2/REV.1/PART 1), submitted by the delegation of Greece on behalf of the delegations of Belgium, Denmark, France, Germany, Federal Republic of, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland.

(f) LOS/PCN/SCN.4/1988/CRP.30, Informal suggested redraft of article 90(1) (LOS/PCN/SCN.4/WP.2/REV.1/PART 1), submitted by the delegation of the United Republic of Tanzania on behalf of the Group of 77.

(g) LOS/PCN/SCN.4/1989/CRP.31, Informal suggestions submitted by the delegation of France regarding the Draft Convention Protocol on the privileges and immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6).

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(h) LOS/PCN/SCN.4/1989/CRP.32, Informal suggested redraft of Article 93 (LOS/PCN/SCN.4/WP.2/REV.1/PART 1), submitted by the delegation of Japan.

(i) LOS/PCN/SCN.4/1989/CRP.33, Informal suggested draft for an additional article (LOS/PCN/SCN.4/WP.6) submitted by the delegation of the Ukrainian SSR.

2. The Special Commission on the recommendation of its Bureau, had decided at its summer meetings in 1988 on the organization of its work for the Seventh Session as follows:

(a) The commission has to continue the examination of the Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea.

(b) It would then commence discussion of the Principles to govern relationship agreements to be concluded between the Tribunal and the United Nations as well as its Specialized agencies, the International Sea-Bed Authority and other international institutions and organizations as well.

(c) It would continue informal consultations on those questions related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

3. The Special Commission could only take up the examination of the draft Protocol on Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6). It employed the same procedure of an article-by-article examination of the draft. because of the complexities involved in formulating a convention.

4. Because of the complexities involved in formulating a draft convention of global significance the Special Commission was unable to complete the review of the working paper (document LOS/PCN/SCN.4/WP.6). During its summer meetings it will resume its consideration of the working paper and discuss the remaining articles as well as the suggested redrafts of articles presented by delegations contained in documents LOS/PCN/SCN.4/1988/CRP.26, CRP.29, and LOS/PCN/SCN.4/1989/CRP.31 and CRP.33 which were not discussed.

5. The views expressed in the discussions on articles 1 to 8 are reflected in the Chairman's Summary (LOS/PCN/SCN.4/L.13).

6. The summary of discussions on the remaining articles 9 - 17 and the preamble as well as the discussion on the suggested redrafts presented by delegations will be issued by the Chairman after the conclusion of the debate on the subject.

7. With regard to the two pending suggestions relating to the prompt release of vessels and crews (Document LOS/PCN/SCN.4/1988/CRP.29 and CRP.30, in accordance with the approved programme of work based on the recommendation of

the Bureau of Special Commission 4, contained in paragraph 12(d) of document LOS/PCN/L.66, during this session of the Preparatory Commission, interested delegations[1/] held three meetings with the aim of arriving at generally acceptable formulations. In the course of the consultations the delegation of Japan introduced an additional suggestion (...CRP.32).

8. The interested delegations exchanged views on all three documents. The consultations were useful, and led to better understanding of positions of the parties involved. Due to lack of time, however, the interested delegations were unable to reach generally acceptable formulations at this session. They intend to continue consultations if possible, at the beginning of the summer meeting of the Preparatory Commission with a view to concluding them before the end of that meeting.

9. In the absence of the Chairman during the current session, the Special Commission approved the recommendation of the Acting Chairman that he would not carry out those consultations since they were being personally carried out by the Chairman. During the summer meetings the Chairman would continue these informal consultations.

10. The Bureau of the Special Commission made the following recommendations concerning the organization of its work for the summer meetings:

(a) At the beginning of the summer meetings, the Special Commission would complete the examination of the Draft protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea and related issues. Following the conclusion of that examination, the Secretariat would be entrusted with the revision of the draft in the light of the suggestions made in the course of the discussion.

(b) The Special Commission would commence discussion of the issues concerning relationship agreements to be concluded between the Tribunal and the United Nations and its organs, bodies and appropriate Specialized agencies; the International Sea-Bed Authority and possibly other International institutions and organizations as well. The working paper prepared, by the Secretariat, is contained in document LOS/PCN/SCN.4/WP.7.

(c) Another task for the Chairman of the Special Commission during the seventh session would be to continue his informal consultations on those problems related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

11. The Acting Chairman offered his gratitude to delegations whose sense of responsibility and constructive approach had made progress possible during the current session.

1/ Argentina, Brazil, Cameroon, European Economic Community, Indonesia, Japan, Kenya, Malaysia, Spain (on behalf of the EEC Member States), Ukrainian SSR, USSR, United Republic of Tanzania.

12. Many delegations extended their wishes for the speedy recovery of the Special Commission's Chairman, Dr. Gunter Goerner. A telegram was sent to him by the acting Chairman on behalf of the whole Special Commission wishing him a speedy recovery.

13. The acting Chairman also thanked the members of the Bureau, Ambassador Antonio-José Uribe-Portocarrero (Colombia), Mr. George Coquia (Philippines) and Ambassador Achol Deng (Sudan) for their valuable assistance and guidance. He expressed his gratitude for the support provided by the Secretariat, headed by the Special Representative of the United Nations Secretary-General for the Law of the Sea, Mr. Satya Nandan, acknowledging the assistance and advice he had provided and the excellent working conditions which had been ensured.

14. The Chairman offered special thanks to the Secretary of the Special Commission, Mr. Gritakumar Chitty, for the valuable guidance he had given to him and to delegates both during and after meetings, and he cordially thanked Mrs. Gertrude Blake, Mr. Jacob Enoch and other unseen helpers for their valuable assistance..

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INTERNATIONAL SEA-BED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Seventh session
Kingston, Jamaica
27 February-23 March 1989

STATEMENT TO THE PLENARY BY THE ACTING CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

Corrigendum

1. Page 2, paragraph 2

Insert a new subparagraph (d) reading

(d) The interested delegations would continue consultation on the pending issues relating to the prompt release of vessels and crews.

2. Page 3, paragraph 9

For the existing text substitute

9. In the absence of the Chairman during the current session, the Special Commission approved the recommendation of the Acting Chairman that he would not carry out informal consultations on the questions related to the seat of the Tribunal since they were being personally carried out by the Chairman. During the summer meetings the Chairman would continue these informal consultations.

3. Page 3, paragraph 10, subparagraph (c), line 3

Replace problems by questions

4. Page 3, paragraph 10

Insert a new subparagraph (d) reading

(d) Informal consultations among the interested delegations will continue on the prompt release of vessels and crews.

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED
AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 14 August-1 September 1989

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. During the summer meetings of the seventh session of the Preparatory Commission, the Special Commission had before it the documents from previous sessions. In addition, it had before it the following documents:

(a) LOS/PCN/SCN.4/L.10/Add.1, the addendum to the Chairman's summary of discussions on the revised draft rules of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/1989/CRP.34, containing proposals relating to the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea, submitted by the delegation of Belgium;

(c) LOS/PCN/SCN.4/1989/CRP.35, suggested article 16 bis of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea, submitted by the delegation of the Federal Republic of Germany;

(d) LOS/PCN/SCN.4/1989/CRP.36, Indicative list of issues specific to relationship agreements between the International Tribunal for the Law of the Sea and the United Nations, the International Sea-Bed Authority, the International Court of Justice and specialized agencies of the United Nations with relevant competences - Note by the Secretariat;

(e) LOS/PCN/SCN.4/1989/CRP.37, suggested redraft of article 90, paragraph 1, and article 93 (LOS/PCN/SCN.4/WP.2/Rev.1/Part I), submitted by the delegation of the United Republic of Tanzania on behalf of the Group of 77; the delegation of France on behalf of the delegations of Belgium, Denmark, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom of Great Britain and Northern Ireland; the delegation of Japan; and the delegation of the Union of Soviet Socialist Republics.

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2. On the recommendation of its Bureau, the Special Commission had decided during the seventh session at Kingston to organize its work at the current summer meetings in such a way that it would first complete the examination of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea. Thereafter, the Special Commission was to commence the discussion of principles to govern relationship agreements to be concluded between the Tribunal and the United Nations, the International Court of Justice and the International Sea-Bed Authority and possibly other international institutions as well. Another task was for the Chairman of the Special Commission during the summer meetings to hold further informal consultations concerning the questions relating to the seat of the Tribunal with a view to coming to a generally acceptable understanding. With regard to the pending issues relating to the prompt release of vessels and crews, interested delegations were called upon to continue their informal consultations in the search for generally acceptable formulations.

3. The Special Commission had a total of eight meetings at its disposal for its work in New York. At its 97th to 103rd meetings, the Special Commission continued the examination of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea. It first considered the last few articles of the draft (articles 16-18), a provision on the use of terms and the preamble. Thereafter, it discussed informal suggestions on the draft articles that had been submitted by delegations in conference room papers 24, 26, 27, 31, 33, 34 and 35. The chairman's summary of those discussions will appear after the conclusion of the current summer meetings. Upon the completion of the examination of the draft Protocol, the Secretariat was requested to revise the draft in the light of the suggestions made in the course of that examination.

4. Thereafter, the Special Commission turned to the next item on its agenda, i.e., the consideration of principles to govern relationship agreements to be concluded between the Tribunal and other international institutions. The Special Commission had before it in this connection documents LOS/PCN/SCN.4/WP.7, prepared by the Secretariat under the title "Issues concerning relationship agreements between the Tribunal for the Law of the Sea and other international organizations"; and LOS/PCN/SCN.4/1989/CRP.36, also prepared by the Secretariat and containing an indicative list of issues specific to relationship agreements between the International Tribunal for the Law of the Sea and the United Nations, the International Sea-Bed Authority, the International Court of Justice and specialized agencies of the United Nations with relevant competences.

5. At its 103rd and 104th meetings, the Special Commission discussed the issues related to relationship agreements of the Tribunal. The Special Commission first conducted a brief exchange of opinions on what would be the most productive method in working out principles to govern relationship agreements of the Tribunal. There was agreement to the effect that, to begin with, the Special Commission was to focus on identifying the main substance of relationship agreements between the Tribunal on the one hand and the United Nations, the International Court of Justice and the International Sea-Bed Authority on the other. Thereafter, the Special Commission should also look into the substance of relationship agreements the Tribunal might conclude with other international institutions having competence in the field of the law of the sea and related ocean affairs.

6. On the basis of conference room paper 36 and working paper 7 the Special Commission identified the main substance of relationship agreements between the Tribunal and the United Nations, the International Court of Justice and the International Sea-Bed Authority. There was agreement that the lists of main issues for the relationship agreements between the Tribunal and the United Nations, the International Court of Justice and the International Sea-Bed Authority examined by the Special Commission are of an indicative nature. The possibility should be left open for the relationship agreements of the Tribunal with the three institutions concerned to cover subject-matters additional to those compiled in the lists. There was also agreement that the Special Commission should consider the form of the legal instruments regulating the relationship between the Tribunal and other international institutions only after it has worked out the content to be included in such legal instruments.

7. During the current summer meetings the Chairman continued his informal consultations on matters relating to the seat of the Tribunal. He was in contact with the Chairman of the Group of 77 and also with a number of interested delegations, including the delegation of the Federal Republic of Germany.

8. The Chairman conducted his consultations with interested delegations from all regional groups on the basis of the informal proposal of the Bureau as contained in LOS/PCN/SCN.4/1986/CRP.21. In the course of the consultations, progress was made in working out a text of an understanding, even though important elements of such an understanding require further consideration. However, due to lack of time it was not possible to resolve the remaining points during the summer meetings.

9. The Chairman of the Group of 77 stated that the latest position of that group on the question of the seat of the Tribunal was reflected in the letter addressed by the Chairman of the Group of 77 to the chairman of the Preparatory Commission (LOS/PCN/107) dated 22 March 1989. He made known that the Group of 77 has continued the consideration of that subject at the present summer meetings, and he indicated that the basis for that consideration was the informal proposal of the Bureau of Special Commission 4 contained in document LOS/PCN/SCN.4/1986/CRP.21.

10. The Chairman of the Special Commission was hopeful that at the next session at Kingston it will be possible to complete a generally acceptable wording of such an undertstanding. The Bureau recommended, and the Special Commission decided, that the Chairman continue his informal consultations with a view to finding a solution that would meet with the general approval of the Preparatory Commission.

11. With regard to the pending suggestions relating to the prompt release of vessels and crews (documents LOS/PCN/SCN.4/1988/CRP.29, CRP.30 and CRP.32), interested delegations successfully completed their consultations. In conference room paper 37 they submitted redrafts of articles 90 (1) and 93 of the draft Rules of the Tribunal (LOS/PCN/SCN.4/WP.2/Rev.1/Part I), which proved generally acceptable to the Special Commission. The latter therefore decided that those redrafts should be incorporated into the revision of the draft rules of the Tribunal to be prepared by the Secretariat.

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12. The Bureau of the Special Commission made the following recommendations concerning the organization of the work of the Special Commission at the eighth session:

(a) The Special Commission should commence the consideration of the institutional structure and initial staffing needs of the Tribunal, basing itself on the organizational structure of the Tribunal deriving from the relevant provisions of the Law of the Sea Convention and taking into account the structure of existing international tribunals and courts and their experiences. In this context the Special Commission should also take up the initial and subsequent financial implications arising from the envisaged institutional structure of the Tribunal. In this connection the question of the working languages of the Tribunal should also be considered. The Secretariat has been requested to prepare, in sufficient time in advance of the eighth session at Kingston, a relevant working paper suitable for discussion in the Special Commission. The study should outline the institutional structure and initial staffing needs of the International Tribunal for the Law of the Sea, taking into account the structure of existing international courts and tribunals and their experiences and providing the initial and subsequent financial implications of establishing nad maintaining the proposed structure. The Special Commission suggested that the structural and financial implications could be based on the use of two working languages with the pleadings and judgements to be issued in all six working languages after completion of each application case, or advisory opinion. Alternatives for the structure and financial implications should also be provided on the basis of one working language and six working languages;

(b) Moreover, the Special Commission should continue the examination of the main content of draft agreements/arrangements to be concluded between the Triunal and the United Nations, the International Court of Justice and the International Sea-Bed Authority and, if necessary, with other international bodies having competence in the field of the law of the sea and relevant ocean affairs. The Secretariat has therefore been requested to prepare a working paper containing the requisite elements of a relationship agreement between the Tribunal and the United Nations, which will be the basis for a relationship agreement to be negotiated between these parties. To the extent possible the working paper should contain textual formulations to be incorporated in an agreement with clarifications or explanations where appropriate;

(c) Another task during the eighth session is for the Chairman of the Special Commission to continue his informal consultations on the questions related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

13. The Chairman expressed his gratitude and appreciation to delegations for their continued co-operation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, Dr. Alfonso López-Reina (Colombia), Dr. Theodore Chaliopoulos (Greece), Mr. Jorge Coquia (Philippines) and Dr. Achol Deng (Sudan) for the helpful guidance and competent advice they had given him also during this session. The Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya Nandan, as well as to the

Secretary of the Special Commission, Mr. Gritakumar Chitty, to Mr. Roy Lee, the representative of the Office of Legal Affairs, to Mrs. Gertrude Blake and Mr. Jeol Hernandez-Garcia as well as to the other members of the Secretariat for the valuable and competent services they had again rendered to the Commission, especially in preparing and submitting the various drafts and papers.

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEA-BED AUTHORITY AND
FOR THE INTERNATIONAL TRIBUNAL FOR
THE LAW OF THE SEA
Eighth Session
Kingston, Jamaica
5-30 March 1990

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the eighth session of the Preparatory Commission, the Special Commission had before it, in addition to the documents from previous sessions, the following:

a) LOS/PCN/SCN.4/WP.8, Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (Prepared by the Secretariat);

b) LOS/PCN/SCN.4/WP.8/Add.1, Addendum to the administrative arrangements, structure and financial implications to the International Tribunal for the Law of the Sea. (Supplementary cost estimates reflecting alternatives as to official working languages) (Prepared by the Secretariat);

c) LOS/PCN/SCN.4/WP.9, Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (Draft agreement on co-operation and relationships between the United Nations and the International Tribunal for the Law of the Sea) (Prepared by the Secretariat);

d) LOS/PCN/SCN.4/WP.9/Add.1, Addendum to the Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (Arrangements regarding the United Nations common system of salaries and benefits, and participation in the United Nations Joint Staff Pension Fund) (Prepared by the Secretariat);

e) LOS/PCN/SCN.4/L.13/Add.1, Addendum to the Chairman's summary of discussions on the Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

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f) LOS/PCN/SCN.4/1990/CRP.38, Informal Proposal of the Bureau of Special Commission 4 on the organization of the future work of the Special Commission;

g) LOS/PCN/SCN.4/L.14, Chairman's Summary of discussions on the administrative arrangements, structure and financial implications for the International Tribunal for the Law of the Sea.

2. On the recommendation of its Bureau, Special Commission 4 had decided during the summer meetings of the Seventh Session in New York to commence its work at this session with the consideration of the institutional structure and initial staffing needs of the Tribunal. The Special Commission was next to continue the examination of the arrangements to be concluded between the Tribunal and the United Nations, the International Court of Justice, the International Sea-Bed Authority and, if necessary, with other international bodies having competence in the field of the law of the sea and relevant ocean affairs.

3. The Special Commission had also agreed that at this session it would review the remaining work to be accomplished for the fulfillment of the mandate of the Preparatory Commission under paragraph 10 of Resolution I of the Third United Nations Conference on the Law of the Sea.

4. Another task during the Eighth Session was for the Chairman of the Special Commission to continue his informal consultations on the questions related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

5. The Special Commission had a total of thirteen meetings at its disposal. Commencing with its 105th meeting, the Special Commission devoted 7 meetings to the consideration of the administrative arrangements, structure and financial implications of the Tribunal on the basis of document LOS/PCN/SCN.4/WP.8 prepared by the Secretariat. The Special Commission agreed that it would continue its consideration of this item during the summer meetings of the Eighth Session, since delegations desired the opportunity to consult their competent national authorities before they took an official stand in this connection.

6. There was agreement on the need for maximum economy in the establishment of the Tribunal and its functioning while maintaining the highest possible level of efficiency. A number of suggestions were made. One of them was that the costs of Members' allowances and of the Registry of the Tribunal should be further reduced through a highly effective structure and the streamlining of the work of the Registry. It was suggested that in its initial phase the Tribunal should employ a minimum of staff with a view to gradually increasing its size in parallel with its increasing case load.

7. Another focus of discussions was the best method of exercising control over the budget of the Tribunal.

8. The Special Commission also conducted an exchange of views on the number of official languages to be employed by the Tribunal since that would have a direct impact on costs. The Working Paper is based on the use of two official languages, with unofficial translations of Judgements in the other four official languages of the United Nations and the pleadings to be issued in all six official languages, after completion of each application, case or advisory opinion.

9. The Chairman's Summary of discussions on the administrative arrangements, structure and financial implications for the Tribunal is reflected in document LOS/PCN/SCN.4/L.14.

10. The 112th to 115th meetings and the 117th meeting were devoted to the consideration of the draft agreement on co-operation and relationships between the Tribunal and the United Nations, contained in document LOS/PCN/SCN.4/WP.9 prepared by the Secretariat. The Special Commission began by dealing with the draft agreement article by article, the discussion of the preamble being deferred to the end. Articles 1 to 7 have been discussed. They relate, among other things, to principles governing the establishment of relations between the Tribunal and the United Nations, co-operation, the exchange of information and documents, and reciprocal representation.

11. At the 116th and 117th meetings, the Special Commission discussed the organization of its future work on the basis of an informal proposal of its Bureau, contained in document LOS/PCN/SCN.4/1990/CRP.38.

12. Concerning the programme for the summer meetings, the Special Commission agreed to consider and complete the examination of the following subjects:

- Administrative arrangements, structure and financial implications for the International Tribunal for the law of the Sea (LOS/PCN/SCN.4/WP.8);

- Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9 and Add.1);

- Elements of relationship agreement between the International Tribunal for the Law of the Sea and the International Sea-Bed Authority;

- Elements of supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice.

13. The Secretariat was requested to prepare the necessary working papers for the review of the relationship agreement between the Tribunal and the International Sea-Bed Authority, and also the elements of the supplementary arrangements between the Tribunal and the ICJ. The working paper for the latter item would be prepared after the Special Commission has completed its

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review on the draft relationship agreement between the Tribunal and the United Nations (document LOS/PCN/SCN.4/WP.9), in view of the fact that this working paper contained elements of the relationship between the Tribunal and the ICJ.

14. The Secretariat was also requested to prepare a working paper, outlining a scheme for a minimal initial establishment of the Tribunal to serve during its first years of its existence. The paper should reflect the most efficient institutional structure with the least cost implications. This paper would be based on the discussions in the Special Commission on the administrative arrangements, structure and financial implications of the Tribunal (document LOS/PCN/SCN.4/WP.8).

15. The Bureau proposal was to take up the following matters at subsequent sessions:

- Principles to govern the financial rules of the International Tribunal for the Law of the Sea;

- Principles to govern the staff regulations of the International Tribunal for the Law of the Sea;

- Principles to govern the rules of procedure for the Meeting of the States Parties;

- If time permits, review of the redrafts of the Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, and of the Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

- Consideration of the building requirements and facilities for the seat of the International Tribunal for the Law of the Sea and report of the host country on the progress of work in this respect; other issues related to the seat of the Tribunal may be considered in this context;

- As the last item of its agenda the Special Commission should take up the draft report containing recommendations for submission to the Meeting of the States Parties regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

Concerning the first three items, several delegations expressed the view that the Special Commission should not consider these items.

16. As regards the first three items on the financial rules and the staff regulations of the Tribunal and the draft rules of procedure for the Meeting of States Parties, these delegations felt that these matters could appropriately be dealt with by the Meeting of States Parties. In their view, it was neither necessary nor appropriate for the Special Commission to consider or make recommendations in this connection. However, other delegations considered it necessary to deal with these three items and to make corresponding recommendations to the Meeting of States Parties.

17. Finally, it was the understanding of the Special Commission that the above-mentioned 3 items should be replaced by the following agenda item:

- documentation to be prepared by the Secretariat for consideration by the Meeting of States Parties.

In discussing this item, it was understood that the Special Commission would not examine the content of the respective drafts to be prepared by the Secretariat.

18. The Special Commission approved the fourth item listed above. As regards the fifth item, the Special Commission approved it with the deletion of the final phrase "may be considered in this context". As regards the sixth item, the Special Commission decided to clarify that the Meeting of States Parties means the meeting to be convened in accordance with Annex VI, article 4, of the Convention.

19. During the current session the Chairman continued informal consultations on matters relating to the seat of the Tribunal. He consulted with the Chairman of the Group of 77 and also with a number of interested delegations, including the delegation of the Federal Republic of Germany.

20. He reported that divergent views continue to be held concerning the approach to be taken to the requirements listed in the introductory note to the revision of the official draft convention (A/CONF.62/L.78). The Chairman of the Group of 77 stated that the position of that group continued to be as reflected in the letter addressed by the Chairman of the Group of 77 to the Chairman of the Preparatory Commission on 22 March 1989 (LOS/PCN/107).

21. These consultations reflected agreement to the effect that there is no reason at this point in time to enter into a discussion on the issues related to the seat of the Tribunal, and that the Chairman should continue his consultations during the summer meetings.

22. The Bureau of the Special Commission made the following recommendations concerning the organization of work of the Special Commission at the summer meetings of the eighth session:

a) The Special Commission should continue the consideration of the administrative arrangements, structure and financial implications for the Tribunal on the basis of document LOS/PCN/SCN.4/WP.8 and addendum 1. In this context, it should also consider the working paper to be prepared by the Secretariat as referred to in paragraph 14 above.

b) The Special Commission should thereafter continue the examination of the draft agreement on co-operation and relationships between the United Nations and the Tribunal as contained in document LOS/PCN/SCN.4/WP.9 and WP.9/Add.1. After that the Special Commission will take up elements of supplementary arrangements between the Tribunal and the ICJ as well as elements of a relationship agreement between the Tribunal and the International Sea-Bed Authority. The Secretariat was requested to prepare the necessary documents.

c) Another task during the summer meetings of the Eighth Session is for the Chairman of the Special Commission to continue his informal consultations on questions related to the seat of the Tribunal with a view to coming to a generally acceptable solution.

23. The Chairman expressed his gratitude and appreciation to delegations for their continued co-operation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, S.E. Dra. Ninon Millan (Colombia), Dr. Theodore Halkiopoulos (Greece) and Mr. Jorge Coquia (Philippines) for the helpful guidance and competent advice they had given him also during this session. The Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya Nandan, as well as the Secretary of the Special Commission, Mr. Gritakumar Chitty, to Mr. Roy Lee, to Mrs. Gertrude Blake, to Ms. Grace Sistoso and Miss Sharon Richards as well as to the other members of the Secretariat for the valuable and competent services they had again rendered to the Commission, especially in preparing and submitting the various working papers and drafts.

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FOR THE LAW OF THE SEA
New York, 13-31 August 1990

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. During the summer meetings of the eighth session of the Preparatory Commission, the Special Commission had before it, in addition to the documents from previous sessions, the following documents:

(a) LOS/PCN/SCN.4/WP.8, Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.8/Add.1, Addendum to the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (Supplementary cost estimates reflecting alternatives as to official working languages);

(c) LOS/PCN/SCN.4/WP.9, Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (Draft agreement on co-operation and relationships between the United Nations and the International Tribunal for the Law of the Sea);

(d) LOS/PCN/SCN.4/WP.9/Add.1, Addendum to the Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (Arrangements regarding the United Nations common system of salaries and benefits, and participation in the United Nations Joint Staff Pension Fund);

(e) LOS/PCN/SCN.4/L.14, Chairman's summary of discussions on the Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea;

(f) LOS/PCN/SCN.4/WP.10, Principles governing a relationship agreement between the International Tribunal for the Law of the Sea and the International Sea-Bed Authority;

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(g) LOS/PCN/SCN.4/WP.8/Add.2, Addendum to the Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (A scheme to phase in the establishment of the International Tribunal for the Law of the Sea);

(h) LOS/PCN/L.81, Statement to the Plenary by the Chairman of Special Commission 4 on the progress of work in that Commission during the eighth session.

2. On the recommendation of its Bureau, Special Commission 4 had decided during the eighth session at Kingston to commence its work at the current session with the continuation of the consideration of LOS/PCN/SCN.4/WP.8 dealing with the administrative arrangements, structure and financial implications for the International Tribunal for the Law of the Sea; the supplementary cost estimates reflecting alternatives as to official working languages of the Tribunal (LOS/PCN/SCN.4/WP.8/Add.1); and a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2).

3. The Special Commission was next to continue the examination of the draft agreement on co-operation and relationships between the United Nations and the Tribunal (LOS/PCN/SCN.4/WP.9 and Add.1). Thereafter, the Special Commission was to take up the principles governing a relationship agreement between the Tribunal and the Authority (LOS/PCN/SCN.4/WP.10).

4. The Special Commission had also agreed that the Chairman of the Commission would continue his informal consultations on the questions related to the Seat of the Tribunal with a view to coming to a generally acceptable solution.

5. The Special Commission held a total of eight meetings, starting with the 118th meeting. The Special Commission devoted most of its meetings to continuing the consideration of the draft relationship arrangement between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9). The Commission began its consideration with article 8, as the previous articles had already been discussed at the Kingston session. A number of suggestions were made in the course of the discussion. One of them was to keep the agreement as short as possible and not to subordinate the Tribunal to any other international organization, including the United Nations. Delegations reiterated the need for maximum economy in the establishment of the Tribunal and its functioning while maintaining the highest possible level of efficiency.

6. The Special Commission conducted an exchange of views on the number of official working languages of the Tribunal during its examination of document WP.8/Add.1 on the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - supplementary cost estimates reflecting alternatives as to official working languages.

7. During the exchange of views, several delegations indicated that they would prefer the option of two official languages for the Tribunal, while others, although recognizing the wisdom of two official working languages during the phasing-in period of the Tribunal, also expressed the wish to see provisions made for the unofficial translation of all the pleadings, judgments and decisions of the

Tribunal into the other four official languages of the United Nations, after completion of each application, case or advisory opinion. The translation should be done under the strict supervision of the Tribunal. It was suggested that provision should be made for six official languages as and when the work of the Tribunal increased.

8. Some delegations showed a preference as to which should be the official languages, while others reserved their positions on the matter and requested that the Special Commission, at an appropriate time, hold a full discussion on the issue.

9. The 124th and 125th meetings were devoted to the consideration of working paper 10 on the principles governing a relationship arrangement between the International Tribunal for the Law of the Sea and the International Sea-Bed Authority. The Special Commission discussed the document part by part, in particular, the preamble; the governing principles and mutual recognition of responsibilities, rights and obligations; consultation, co-operation and co-ordination; exchange of information and documents; administrative co-operation and personnel arrangements; and budgetary and financial arrangements. During the discussion some delegations expressed the view that a decision of principle would have to be taken as to the necessity for the Tribunal to conclude a relationship agreement with the Authority, since this would tend to influence some decisions of the Tribunal. They felt that the independence of the Tribunal should be maintained at all costs.

10. Informal consultations on the Seat of the Tribunal were not held during the current session since Dr. Gunter Goerner, Chairman of the Commission, was not present due to illness. Those consultations will be included in the programme of work for the next session.

11. Concerning the programme of work for the ninth session, on the recommendation of the Bureau, the Special Commission agreed, at its 124th meeting, to consider the following subjects:

(i) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - a scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2);

(ii) Consideration of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea and report of the host country on the progress of work in this respect; other issues related to the Seat of the Tribunal may be considered in this context;

(iii) Elements of supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice;

(iv) Review of the re-drafts of the Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(v) Review of the re-drafts of the Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea.

Another task during the summer meetings of the ninth session is for the Chairman of the Special Commission to continue his informal consultations on the questions related to the Seat of the Tribunal with a view to coming to a generally acceptable solution.

12. The Secretariat was therefore requested to prepare a second revision of the draft headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1, Parts I and II), taking into consideration the amendments and suggestions put forward by delegations during the discussion of those documents.

13. The Secretariat was also requested to prepare a re-draft of the draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6). The Secretariat was requested to take into consideration suggestions made by delegations as to the harmonization of certain provisions of that document with the provisions of the headquarters agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany.

14. The Acting Chairman expressed his gratitude and appreciation to delegations for their continued co-operation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, Mr. Enrique Peñalosa (Colombia), Mr. Jorge Coquia (Philippines) and Mr. Kuol Alor Kuol (Sudan), for the helpful guidance and competent advice they had given him also during the current session. The Acting Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya N. Nandan; as well as the Secretary of the Special Commission, Mr. Gritakumar E. Chitty; to Mr. Roy Lee; to Mrs. Gertrude Blake; to Mr. Joel Hernandez; to Miss Alice Hicuburundi; and to Ms. Grace Sistoso, as well as to the other members of the Secretariat for the valuable and competent services they had again rendered to the Commission, especially in preparing and submitting various working papers and drafts. The Acting Chairman and the Commission requested the delegation of the German Democratic Republic to convey to Dr. Goerner the concern of the members of the Special Commission and their wishes for his speedy recovery.

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Ninth session
Kingston, Jamaica
25 February-22 March 1991

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the ninth session of the Preparatory Commission, the Special Commission had before it, in addition to the documents from previous sessions, the following documents:

(a) LOS/PCN/SCN.4/L.15, the Chairman's summary of discussions - Relationship Arrangements between the United Nations and the International Tribunal for the Law of the Sea; Draft Agreement on Co-operation and Relationships between the United Nations and the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4, Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

(c) LOS/PCN/SCN.4/WP.8/Add.2 and Corr.1, Addendum to the Administrative Arrangements, Structure and Financial Implications of the International Tribunal for the Law of the Sea (A scheme to phase in the establishment of the International Tribunal for the Law of the Sea);

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(d) LOS/PCN.4/1991/CRP.39, Status of Work in Special Commission 4;

(e) LOS/PCN/SCN.4/1991/CRP.40, report on the progress of work dated 13 March 1991 concerning the building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg, statement of the Parliamentary State-Secretary, H.E. Mr. Rainer Funke, Ministry of Justice of the Federal Republic of Germany.

2. On the recommendation of its Bureau, Special Commission 4 in accordance with the programme of work approved during the summer meetings of the eighth session in New York (LOS/PCN/L.86, para. 11) taking note of availability of documents had decided to commence its work at the current session at Kingston with the consideration of document LOS/PCN/SCN.4/WP.8/Add.2 dealing with the administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, a scheme to phase in the establishment of the Tribunal. It was understood that during the discussion of document LOS/PCN/WP.8/Add.1 dealing with the supplementary cost estimates reflecting alternatives as to official working languages of the Tribunal would also be taken into account. At the request of some delegations, it was agreed that an appropriate time would be allocated for stating their positions on the issue of languages of the Tribunal.

3. The Special Commission was next to review the re-drafts of the Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4).

4. The Special Commission was also to consider the issue of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea and report of the host country on the progress of work in this respect; other issues related to the Seat of the Tribunal may be considered in this context.

5. Another task for the Chairman of the Special Commission was to continue his informal consultations on the questions related to the Seat of the Tribunal with the view to coming to a generally acceptable solution.

6. Other issues included in the programme of work for the Ninth Session of the Preparatory Commission contained in document LOS/PCN/L.86, para. 11 would be taken up subject to the availability of the documents.

7. The Special Commission held a total of thirteen meetings, starting with the 126th meeting. The Contact Group of the Group of 77 on Special Commission 4 matters utilized some of the time allocated to meetings of Special Commission 4 for co-ordination purposes.

8. The 126th to 130th meetings were devoted to the consideration of administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, a scheme to phase in the establishment of the Tribunal (document LOS/PCN/SCN.4/WP.8/Add.2, prepared by the Secretariat). The Special Commission dealt with that working paper referring also to the previous documents (LOS/PCN/SCN.4/WP.8 and LOS/PCN/SCN.4/WP.8/Add.1) which are closely inter-related. The Secretariat was requested to prepare a revision containing the relevant elements found in the three working papers, taking into consideration sugestions and comments made by delegations in this regard.

9. At the request of some delegations which have previously reserved their position on the number of official languages to be used by the International Tribunal for the Law of the Sea statements were made on this issue at the 129th meeting of the Special Commission. Consultations were conducted among interested delegations with the view to reaching a generally acceptable recommendation. Some interested delegations expressed their hope that such a recommendation could be reached and therefore requested an opportunity to continue the consultations at the summer meetings of the Commission.

10. The Special Commission also considered, at its 130th to 138th meetings, the revised draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea, contained in document LOS/PCN/SCN.4/WP.6/Rev.1 prepared by the Secretariat. The Special Commission examined the draft Protocol article by article. The preamble and articles 1 to 13 have been discussed. The Secretariat was requested to prepare a redraft of several articles of the Protocol taking into account all agreements reached in the Special Commission on this issue and suggestions made by delegations.

11. Discussion of matters referred to in paragraphs 7 to 9 of this statement in the Special Commission at the ninth session will be reflected in the Chairman's Summaries to be issued as documents LOS/PCN/SCN.4/L.13/Add.2 concerning the Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea and LOS/PCN/SCN.4/L.14/Add.1, concerning the scheme to phase in the establishment of the International Tribunal for the Law of the Sea.

12. At the 133rd meeting of the Special Commission, the delegation of Germany made a statement on the progress of work in respect of the building requirements and facilities for the seat of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/1991/CRP.40).

13. During the current session the Chairman continued informal consultations on matters relating to the Seat of the Tribunal. He consulted with the Chairman of the Group of 77 and also with a number of interested delegations, including the delegation of Germany.

14. He reported that divergent views continue to be held concerning the approach to be taken to the requirements listed in the introductory note to the revision of the official draft Convention (A/CONF.62/L.78). The Chairman of the Group of 77 stated that the position of the Group of 77 continued to be as reflected in the letter addressed by the Chairman of the Group of 77 to the Chairman of the Preparatory Commission on 22 March 1989 (LOS/PCN/107).

15. These consultations reflected agreement to the effect that there is no reason at this point in time to enter into a discussion on the issues related to the Seat of the Tribunal, and the Chairman should continue his consultations during the summer meetings with a view to coming to a generally acceptable solution.

16. At the 130th meeting, in response to the informal request of some delegations, the Chairman made, for information purposes only, a statement relating to the status of work in Special Commission 4 (LOS/PCN/SCN.4/1991/CRP.39).

17. The Bureau of the Special Commission has proposed that the following matters be considered at the summer meetings of the ninth session:

- Review of those provisions of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea for which the Secretariat has been requested to provide redrafts; Consideration of articles 14-23 of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea contained in document LOS/PCN/SCN/4/WP.6/Rev.1, including Corr.1-4, which the Special Commission was unable to take up at the Ninth Session of the Preparatory Commission;

- Elements of supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice. The Secretariat has been requested to prepare a working paper for this purpose;

- Review of the Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, for which a working paper has been prepared by the Secretariat (document LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1);

- Consideration of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea; other issues related to the Seat of the Tribunal may be considered in this context;

- Initial financing of the International Tribunal for the Law of the Sea, for which the Secretariat is requested to prepare a background paper;

- Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea; results of consultations on the languages to be used by the Tribunal and on the number of Members of the Tribunal to be available at the Seat of the International Tribunal for the Law of the Sea;

- Continuation of informal consultations by the Chairman of Special Commission 4 on the questions related to the Seat of the Tribunal, with the view to coming to a generally acceptable solution;

- If time permits, consideration of:

  (a) relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea;

  (b) Principles governing a relationship agreement between the International Tribunal for the Law of the Sea and the International Sea-Bed Authority;

- Issues relating to the draft report containing recommendations for submission to the Meeting of the States Parties to be convened in accordance with Annex VI, article 4 of the United Nations Convention on the Law of the Sea, regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea:

  (a) form and content of the draft report;

  (b) other issues.

This programme of work was approved by the Special Commission at its 138th meeting.

18. A tribute was paid in the Special Commission to the former Chairman of Special Commission 4, Dr. Gunter Goerner (Germany).

19. The Chairman expressed his gratitude and appreciation to delegations for their continued co-operation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, H.E. Dr. Ninon Millan (Colombia), Dr. Theodore Chalkiopoulos (Greece) and Mr. Jorge R. Coquia (Philippines) for the helpful guidance and competent advice they had given him also during this session. The Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya N. Nandan; as well as the Secretary of the Special Commission, Mr. Gritakumar E. Chitty, to Mrs. Gertrude Blake, and to Mr. Roy Lee, Ms. Gladys Serringer and Miss Sharon Richards, as well as to the other members of the Secretariat for the valuable and competent services they had rendered to the Commission.

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UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL TRIBUNAL
FOR THE LAW OF THE SEA
New York, 12-30 August 1991

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the resumed ninth session of the Preparatory Commission, the Special Commission had before it the following documents:

(a) LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4, Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1, Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(c) LOS/PCN/SCN.4/WP.11, Issues Concerning the Initial Financing and Budget of the International Tribunal for the Law of the Sea;

(d) LOS/PCN/SCN.4/1991/CRP.43, Redraft of Pending Articles of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1);

(e) LOS/PCN/SCN.4/1991/CRP.44, Redraft of article 12 of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1).

2. The Special Commission held a total of seven meetings, starting with the 139th meeting. The Contact Group of the Group of 77 on Special Commission 4 Matters utilized some of the time allocated to meetings of the Special Commission for coordination purposes.

3. At the 139th meeting, the Special Commission decided to consider the items on its agenda in the order listed in the work programme for the summer meetings of the ninth session (document LOS/PCN/L.91 of 21 March 1991, para. 17) subject to availability of documents. In considering its working

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methods, the Commission agreed that the Chairman would organize meetings of groups of interested delegations with a view to expediting the attainment of generally acceptable solutions to some issues after first determining which issues might require such consultations. Such meetings would in no way limit the right of delegations to meet on their own initiative in order to formulate any common proposal they might wish to make.

4. Efforts were made to conclude the consideration of articles 14-23 of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4), which the Special Commission had been unable to take up at the ninth Session of the Preparatory Commission at Kingston, as well as to conclude its review of the provisions of this Revised Draft Protocol for which the Secretariat had been requested to provide redrafts (LOS/PCN/SCN.4/1991/CRP.43 and 44). A considerable number of the provisions of the Revised Draft Protocol were approved by the Commission, but some of them still require further consultations. The Chairman's summary of the discussion of this draft Protocol will be reflected in document LOS/PCN/SCN.4/L.13/Add.3.

5. The Special Commission, at its 142nd and 143rd meetings, started its review of the Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, prepared by the Secretariat (LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1). The provisions of articles 1-19 of the document, with some exceptions, were approved by the Commission. Owing to a lack of time, consideration of the remaining articles of this draft agreement was postponed. The Chairman's summary of those discussions will be reflected in document LOS/PCN/SCN.4/L.11/Add.2.

6. The Special Commission was also to consider the supplementary relationship arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice. At the invitation of the Special Commission, the Registrar of the International Court of Justice addressed the 145th meeting of the Commission on the issues involved and expressed some preliminary views. The Secretariat has been requested to prepare a working paper on such supplementary arrangements, taking into account the views expressed at the meeting and the response expected from the Court to the request addressed by the Special Representative of the Secretary-General in this connection.

7. In the context of the issue of administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea, consultations were conducted between interested delegations on the languages to be used by the Tribunal. As a result of the consultations, progress has been made, but a consensus proposal has not been elaborated. Some interested delegations requested of the Chairman that additional time be given to them for the conclusion of the consultations with a view to reaching a satisfactory agreement.

8. The Chairman of the Special Commission continued his informal consultations on the questions related to the Seat of the Tribunal, with a view to coming to a generally acceptable solution. He consulted with the Chairman of the Contact Group of the Group of 77 and also with a number of interested delegations, including the delegation of Germany.

9. The Chairman reported that views concerning the approach to be taken to the requirements listed in the introductory note to the revision of the official draft Convention (A/CONF.62/L.78) have not been changed since the ninth session of the Commission held at Kingston. These consultations reflected agreement that the Chairman should continue his consultations during the next session with a view to coming to a generally acceptable solution.

10. No additional information was available on the issue of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea, and the Commission did not consider the matter during the summer meetings.

11. Owing to a lack of time, the Commission was unable to consider the rest of the items in its programme of work.

12. The Bureau of the Special Commission has proposed that the following matters be considered at the tenth Session of the Preparatory Commission:

(a) Conclusion of the review of the provisions of:

(i) The Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1);

(ii) The Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1);

(b) Elements of supplementary arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice. The Secretariat has been requested to prepare a working paper for this purpose after it receives the views of the Court;

(c) Consideration of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea; other issues related to the Seat of the Tribunal may be considered in this context;

(d) Initial financing of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.11);

(e) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea; results of consultations on the languages to be used by the Tribunal and on the number of Members of the Tribunal to be available at the Seat of the International Tribunal for the Law of the Sea;

(f) Continuation of informal consultations by the Chairman of Special Commission 4 on the questions related to the Seat of the Tribunal, with a view to coming to a generally acceptable solution;

(g) Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea;

(h) Principles governing a relationship agreement between the International Tribunal for the Law of the Sea and the International Seabed Authority;

(i) Issues relating to the draft report containing recommendations for submission to the Meeting of the States Parties to be convened in accordance with Annex VI, article 4, of the United Nations Convention on the Law of the Sea, regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea:

(i) Form and content of the draft report;

(ii) Other issues.

The above programme of work was approved by the Special Commission at its 145th meeting.

13. The Chairman expressed his gratitude and appreciation to delegations for their continued cooperation with the Chair and their constructive approach to the discussions. He also offered thanks to the members of the Bureau, Dr. Theodore Chalkiopoulos (Greece), Mr. Jorge R. Coquia (Philippines), Mr. Siraj-Eldin H. Yousif (Sudan) and Mr. Fernando Alzate (Colombia) for the helpful guidance and competent advice they had given him also during these summer meetings. The Chairman also extended his and the Commission's gratitude to the Special Representative of the Secretary-General of the United Nations, Mr. Satya N. Nandan; as well as to the Secretary of the Special Commission, Mr. Gritakumar E. Chitty, to Mrs. Gertrude Blake and to the other members of the Secretariat for the valuable and competent services they had rendered to the Commission.

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Tenth session
Kingston, Jamaica
24 February-13 March 1992

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the tenth session of the Preparatory Commission, the Special Commission had before it the following documents:

(a) LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1, Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany;

(b) LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1-4, Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

(c) LOS/PCN/SCN.4/WP.11, Issues Concerning the Initial Financing and Budget of the International Tribunal for the Law of the Sea;

(d) LOS/PCN/SCN.4/L.16, Report of the German Delegation on the Building requirements and facilities for the International Tribunal for the Law of the Sea in Hamburg;

(e) LOS/PCN/SCN.4/1992/CRP.45, Suggested redraft of Article 32 of the Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1),

(f) LOS/PCN/SCN.4/1992/CRP.46, Suggested redraft of Article 1(d) and Article 23, paragraph 1, of the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.6/Rev.1) submitted by the delegation of Senegal.

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2. The Special Commission held a total of nine meetings, starting with the 146th meeting. Some of the time allocated to meetings of Special Commission 4 was made available to the Contact Group of the Group of 77 on Special Commission 4 matters for co-ordination purposes.

3. The Special Commission at its 146th meeting, in accordance with the communication from its Chairman, decided to consider the items on its agenda in the order listed in the Work Programme contained in document LOS/PCN/L.96 of 29 August 1991. In view of the inability of the Chairman to attend the session at the outset, the Chairman had designated one of its Vice-Chairmen, Dr. Theodore Chalkiopoulos (Greece) to act as Chairman, which the Special Commission approved.

4. The Special Commission, at its 146th to 153rd meetings, completed its review of the Revised Draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany, prepared by the Secretariat (document LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1) together with the suggested redraft of Article 32 contained in document LOS/PCN/SCN.4/1992/CRP.45. The provisions of articles 20-32 of this document were reviewed and approved by the Commission with the exception of three Articles, viz. Article 22 on "Waiver"; Article 29 on the "Application of the relevant agreements on the Privileges and Immunities of the Tribunal"; and Article 32 - "Final provisions". A Working Group was constituted to deal with the question of waiver. Pursuant to its deliberations, the results were approved by the Special Commission. The other two Articles were approved following the further deliberations of the Special Commission on the issues concerned. The Commission approved the Draft Headquarters Agreement. The provision regarding authentic texts would depend on the determination as to the official languages of the Tribunal. The Secretariat will in due course present the final version of the draft Headquarters Agreement as approved by the Special Commission.

5. At its 152nd to 154th meetings, the Special Commission took up the Revised Draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea (contained in document LOS/PCN/SCN.4/WP.6/Rev.1, including Corr.1-4), together with the redrafts of Articles contained in document LOS/PCN/SCN.4/1992/CRP.46. The outstanding matters were the issue as to States Parties to the Protocol, and the issue as to members of the families forming part of the households of persons enjoying privileges and immunities. The issue concerning States Parties was whether only States Parties to the Convention could accede to the Protocol or whether it should be open to States not parties to the Convention which had access to the Tribunal under Article 20 of its Statute. The question of participation in the Convention being a pre-requisite for participation in the Protocol was resolved following the presentation of an informal proposal by Senegal (document LOS/PCN/SCN.4/1992/CRP.46 dated 9 March 1992). Subject to modications proposed by the delegation of Czechoslovakia, a new provision was approved to replace the relevant formulation in the "Use of terms" provision (Article 1, paragraph (d)). Consequently, Article 23, paragaph 1, was also amended as presented in document LOS/PCN/SCN.4/1992/CRP.46. The Commission adopted the Draft Protocol. The harmonization of the texts is to be carried out under the guidance of the Special Commission. Consequential changes would be made by the Secretariat regarding references to States Parties throughout the text.

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6. The Special Commission was also to consider the supplementary relationship arrangements between the International Tribunal for the Law of the Sea and the International Court of Justice. The Commission was informed of the views of the International Court of Justice communicated by its Registrar in a letter dated 15 January 1992 addressed to the Special Representative of the Secretary-General. The Court, as soon as its judicial calendar allowed, had considered the Draft Agreement on Cooperation and Relationships Between the United Nations and the Tribunal (LOS/PCN/SCN.4/WP.9) and the elements of supplementary arrangement between the Tribunal and the Court together with the related documentation. These questions had been approached by it in a spirit of cooperation and its reaction to the questions should be governed by the first and foremost obligation of the Court to apply its Statute which is an integral part of the Charter. Accordingly, it can take other rules into account only to the extent that it is fully consistent with the application of its Statute to do so. The Court had considered that it can not subscribe directly or through the United Nations Secretariat, to provisions of such an arrangement for it to furnish information and documentation derogating from its normal practice in matters of jurisdiction and procedure, but provisions for such arrangements should be based on the interpretation as it deems appropriate to place on its Statute and its rules on a case-by-case basis. As a consequence, the Special Commission concluded that it would be left to the Court and the Tribunal to deal with these issues on an ad hoc basis as and when it becomes necessary. The Special Commission would, therefore, not proceed further with this question but would reflect this position in its final report.

7. Consultations were continued during the session between interested delegations on the question of languages to be used by the Tribunal in relation to the Administrative Arrangements, Structure and Financial Implications of the International Tribunal for the Law of the Sea (document LOS/PCN/SCN.4/WP.8 and Add.1 and 2). While some progress has been achieved, interested delegations requested the Chairman to permit additional time for conclusion of these consultations.

8. The Special Commission, in the absence of its Chairman, did not continue informal consultations on the questions related to the Seat of the Tribunal, with a view to coming to a generally acceptable solution.

9. On the issue of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea the Special Commission received a report presented by the delegation of Germany (document LOS/PCN/SCN.4/L.16) which reflects the further steps taken by Germany in its planning for the Seat of the Tribunal in Hamburg. The report, inter alia, sets out information on the specifications and the progress of planning for the building of the Tribunal and indicates the next phases of activity contemplated in this connection. The Special Commission took note of the report and the specifications provided therein in considering the requirements and facilities for the Seat of the Tribunal.

10. The Commission was unable to deal with the other items on its agenda for the session as set out in its programme of work contained in LOS/PCN/L.96, paragraph 12.

11. The Bureau of the Special Commission thus recommended that the remaining items for consideration by the Special Commission on the agenda be the following:

(1) Initial financing of the International Tribunal for the Law of the Sea (document LOS/PCN/SCN.4/WP.11);

(2) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8 and WP.8/Add.1 and Add.2); results of consultations on the languages to be used by the Tribunal and on the number of Members of the Tribunal to be available at the Seat of the International Tribunal for the Law of the Sea;

(3) Continuation of informal consultations by the Chairman of Special Commission 4 on the questions related to the Seat of the Tribunal, with a view to coming to a generally acceptable solution;

(4) Relationship arrangements between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9);

(5) Principles governing a relationship agreement between the International Tribunal for the Law of the Sea and the International Seabed Authority (LOS/PCN/SCN.4/WP.10);

(6) Issues relating to the draft report containing recommendations for submission to the Meeting of the States Parties to be convened in accordance with Annex VI, article 4 of the United Nations Convention on the Law of the Sea, regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea:

(i) form and content of the draft report;
(ii) other issues.

12. The Commission adopted the Programme of Work recommended by the Bureau.

13. The Commission also expressed its wish to finish its Programme of Work at the next meeting of the Preparatory Commission in August 1992.

14. The acting Chairman expressed his appreciation for the confidence shown by the Chairman of Special Commission 4, Mr. Anton Bouteiko (Ukraine) in entrusting him with the task of acting during his absence. This was confirmed by the Special Commission. He indicated that he would be reporting to the Chairman on the work that had been carried out in accordance with the programme established by the Commission.

15. He also expressed his gratitude and appreciation to all delegations for the cooperation extended to him and the positive atmosphere that had prevailed in the conduct of the Commission's work. He thanked the members of the Bureau, Mr. Jorge R. Coquia (Philippines), and Dr. Ricardo Vargas Taylor (Colombia) for the advice and guidance provided during this session. The Acting Chairman extended his and the Commission's gratitude to the Secretary of the Special Commission, Mr. Gritakumar E. Chitty, and to Mrs. Gertrude Blake for the dedication and competence with which they performed their functions. He also thanked the other members of the Secretariat.

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND
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THE LAW OF THE SEA
New York, 10-21 August 1991

PROGRESS REPORT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION FOR THE INTERNATIONAL SEABED AUTHORITY AND FOR THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA ON THE WORK OF THE COMMISSION

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INTRODUCTION

1. At its tenth session, held at Kingston, Jamaica, from 24 February to 13 March 1992, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea decided that a progress report on the work of the Preparatory Commission since its inception should be prepared and issued as a report of the Chairman.

2. The present report is intended to assist the Preparatory Commission in deciding the course of its future work. It is also intended to provide Governments with a factual and succinct account of the work done by the Preparatory Commission during the past 10 years (LOS/PCN/L.102).

I. THE PREPARATORY COMMISSION

3. The Third United Nations Conference on the Law of the Sea established the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea and entrusted it with the task of preparing draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions. In paragraphs 5, 8, 9, 10 and 11 of resolution I on the establishment of the Preparatory Commission, the Conference clarified the type of procedures, arrangements, recommendations and studies which should be prepared by the Commission in order to fulfil its mandate referred to above.

4. In accordance with resolution II, paragraph 1, the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea was to be convened once the Convention on the Law of the Sea was signed or acceded to by 50 States. At the conclusion of the Third United Nations Conference on the Law of the Sea, held from 6 to 10 December 1982, the Convention received 119 signatories. Since the required number of signatories had been obtained, the Preparatory Commission began its work in March 1983. The first session of the Preparatory Commission was held from 15 March to 8 April 1983 and was resumed from 15 August to 9 September 1983. These two sessions were primarily devoted to the consideration of administrative arrangements, namely the structure of the Preparatory Commission, the function of its organs and the election of officers.

5. It was decided that the Preparatory Commission shall consist of the Plenary as the principal organ and the following Special Commissions as its main organs enjoying equal status:

(a) A special commission on the problems that could be encountered by developing land-based producer States likely to be most seriously affected by the production of minerals derived from the Area; this Commission was entrusted with the functions referred to in paragraphs 5 (i) and 9 of resolution I;

(b) A special commission for the Enterprise for the adoption of all measures necessary for the early entry into effective operation of the Enterprise; this Commission was entrusted with the functions referred to in paragraph 8 of resolution I and paragraph 12 of resolution II;

(c) A special commission for the preparation of rules, regulations and procedures for the exploration and exploitation of the Area (seabed mining code) (resolution I, paragraph 5 (g));

(d) A special commission for the Tribunal to prepare recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea (resolution I, paragraph 10) (LOS/PCN/27, annex).

6. Among the functions assigned to the Plenary were:

(a) The preparation of rules, regulations and procedures on the administrative, financial and budgetary matters pertaining to the various organs of the Authority (paragraph 5 (g) of resolution I);

(b) The implementation of resolution II governing preparatory investment in pioneer activities relating to polymetallic nodules (paragraph 5 (h) of resolution I);

(c) The preparation, consideration and adoption of the final report referred to in paragraph 11 of resolution I incorporating therein the results of deliberations, on all matters within its exclusive competence and on all matters within the competence of its Special Commissions and other subsidiary bodies as contained in the reports submitted to it by them for the presentation of the final report by the Chairman at the first session of the Assembly of the International Seabed Authority (LOS/PCN/27, annex).

7. A General Committee was established having as one of its main functions the task of acting on behalf of the Preparatory Commission as the executive organ for the administration of resolution II (ibid).

8. At the resumed first session the Preparatory Commission adopted its rules of procedures.

9. Under the rules of procedures membership of the Preparatory Commission was open to all States which have signed the Convention on the Law of the Sea or have acceded to it. Representatives of signatories of the Final Act of the Third United Nations Conference on the Law of the Sea may participate fully in the deliberations of the Preparatory Commission as observers but shall not be entitled to participate in the taking of decisions (see also para. 2 of resolution I).

10. The Preparatory Commission was empowered to establish such subsidiary bodies as necessary for the exercise of its functions and to determine their composition and competence. During the course of its work the Preparatory

Commission established two such bodies. First, it created in 1986 a group of technical experts to determine whether the applications for registration as pioneer investors are in conformity with resolution II (LOS/PCN/L.41/Rev.1, annex). Secondly, in 1989 it established a Training Panel to make recommendations to the Preparatory Commission on the measures to be taken pursuant to the principles and policies established for the implementation of paragraph 12 (a) (ii) of resolution II regarding the training of personnel (LOS/PCN/SCN.2/L.6/Rev.1; LOS/PCN/SCN.2/L.7 and LOS/PCN/L.92).

A. Implementation of resolution II

11. Resolution II of the Third United Nations Conference on the Law of the Sea was adopted together with the Convention on the Law of the Sea on 30 April 1982. The intent of this resolution was to protect the substantial investments already made in the development of seabed mining technology, equipment and expertise. The Preparatory Commission was entrusted with the task of implementing resolution II which embodied the regime for the protection of pioneer investment. This function was assigned to the plenary of the Preparatory Commission (LOS/PCN/27).

12. Under resolution II applicants for pioneer investor status are required to ensure that areas in respect of which applications are made do not overlap one another. Any State which has signed the Convention and which is a prospective certifying State shall ensure before making applications to the Commission, that areas in respect of which application is made do not overlap one another. The States concerned shall resolve the conflicts by negotiations within a reasonable period. If these conflicts were not resolved by 1 March 1983, the prospective certifying States were to arrange for their submission to binding arbitration in accordance with UNCITRAL Arbitration Rule to commence not later than 1 May 1983.

13. Therefore, the first and by far the most important issue facing the Preparatory Commission with respect to the implementation of resolution II was the question of overlaps. At the second session of the Preparatory Commission (1984), the Chairman of the Preparatory Commission was requested to use his good offices to help the parties reach an agreement on resolving their conflicts of overlaps. At the summer meeting held at Geneva in 1984, an understanding on the procedure for conflict resolution among the first group of applicants for registration as pioneer investors - France, India and the Soviet Union was reached. It should be noted that the Soviet Union had submitted its application in July 1983, India in January 1984, and both France and Japan in August 1984. According to this understanding it was stated, inter alia, that all applicants agreed to meet on 17 December 1984 to exchange lists of coordinates in order to ascertain if there were any overlaps between the areas claimed in the applications submitted to the Preparatory Commission for registration as pioneer investors. If any overlap of claims were to be found between two or more applicants, the conflict should be resolved through negotiations (LOS/PCN/L.8).

14. In accordance with this understanding, on 17 December 1984, the four applicants met at Geneva to exchange lists of coordinates of the areas claimed by them. It was discovered that overlaps existed between the application areas of Japan and the Soviet Union and between those of France and the Soviet Union. These areas were all situated in the north-eastern part of the Pacific. India, whose application was in the Indian Ocean, had no conflict of overlaps with respect to its application area (LOS/PCN/L.19).

15. The three countries, France, Japan and the Soviet Union, held a series of meetings in order to resolve the conflicts of overlaps in the application areas (LOS/PCN/56). It was possible to resolve on a provisional basis the conflict of overlaps between Japan and the Soviet Union but that between France and the Soviet Union proved difficult to resolve. It was difficult to find a solution which would meet all the conditions set out in paragraph 3 (a) of resolution II, which provides that "Every application shall cover a total area which need not be a single continuous area, sufficiently large and of sufficient estimated commercial value to allow two mining operations", a part of which being reserved for the International Seabed Authority.

16. A period of intense negotiations ensued. Meetings of the four applicants were held at Geneva, Tokyo and finally Arusha in February 1986. At the Arusha meeting the four applicants submitted a set of proposals which constituted what became known as the Arusha understanding. This understanding dealt with two significant issues: (i) the resolution of conflicts due to overlaps and (ii) the allocation of mine sites to the first group of applicants and the designation of reserved areas for the Authority (LOS/PCN/L.34). This understanding introduced, inter alia, two new elements into the pioneer investor regime - the idea of applying paragraph 1 (e) of resolution II at the time when an application was being registered (prior relinquishment of areas) and the notion of self-selection of areas. It will be recalled that according to resolution II it was the Preparatory Commission and not the applicant which had to designate the part of the area to be reserved for the Authority and to allocate to the pioneer investor the pioneer area.

17. The Chairman conducted consultations on this understanding with all the interested groups: the first group of applicants, the potential applicants, the Group of 10, representing the Group of 17, and the Group of 11, also known as the Friends of the Convention. Finally, it was possible to put together an understanding which is contained in the statement on the implementation of resolution II of 11 September 1986 (LOS/PCN/L.41/Rev.1, annex).

18. This statement established the procedures and mechanisms for the registration of pioneer investors and the registration of the first group of applicants. It provided for the submission of revised applications by France, Japan and the Union of Soviet Socialist Republics and a timetable for meetings of the General Committee to consider these applications. It also provided for the creation of a group of technical experts. The function of this group was to determine whether the application was in conformity with resolution II and to submit their conclusions to the General Committee.

19. The statement incorporated the elements already mentioned in respect of the Arusha understanding. Thus, an applicant who had practical problems in resolving its conflicts with respect to overlapping claims with potential applicants was entitled to make voluntary relinquishment of parts of the application areas simultaneously with its registration as a pioneer investor. The relinquished areas were to be reserved to form part of the application areas of potential applicants qualified to apply as pioneer investors under resolution II, paragraph 1 (a) (ii), until the Convention enters into force. It also empowered each of the first group of applicants to receive areas of its own choice. In return they agreed to assist the Preparatory Commission and the Authority in the exploration of a mine site for the first operation of the Enterprise and in preparing a plan of work in respect of such mine site. The conditions and extent of this assistance were to be discussed and agreed to, following registration.

20. The interests of potential applicants were taken into account in that the statement provided for similar treatment to be given to potential applicants as that given to the first group of applicants, provided that potential applicants assumed similar obligations to those of the first group of applicants, and had submitted their applications before the entry into force of the Convention.

21. It was also agreed that any developing State has the right to apply as a pioneer investor under resolution II until the Convention enters into force. Likewise a group of Socialist States of Eastern Europe or a group of their state enterprises was also given the right to apply for one mine site as pioneer investors under resolution II until the Convention enters into force. It will be recalled that in order to qualify as a pioneer investor, the State or entity must have expended before 1 January 1983 an amount equivalent to at least US$ 30 million in pioneer activities, no less than 10 per cent of which had to be expended in the location, survey and evaluation of the application area (para. 1 (a) of resolution II). Under paragraph 1 (a) (iii), a developing country which has signed the Convention must have met this requirement before 1 January 1985.

22. At its summer meeting in 1987, the Preparatory Commission was informed that the first group of applicants and the potential applicants had concluded a comprehensive settlement of practical problems. This development ensured that all the applications for pioneer investment status would be considered by the Group of Technical Experts and the General Committee. Later that same year first India (17 August 1987) then France, Japan and the Union of Soviet Socialist Republics (17 December 1987) were registered as pioneer investors by the General Committee acting as the executive body of the Preparatory Commission.

23. Following the registration of the four pioneer investors in 1987, the Chairman of the Preparatory Commission during the course of the sixth session (1988) undertook consultations on the modalities of the implementation of the obligations of the registered pioneer investors and their certifying States. An informal consultative group was formed to deal with these issues which related, inter alia, to the following matters:

(a) Exploration in the area reserved for activities by the Authority (para. 12 (a) (i) of resolution II and para. 14 of LOS/PCN/L.41/Rev.1, annex);

(b) Annual fixed fee of US$ 1 million (para. 7 (b) of resolution II);

(c) Training of personnel (para. 12 (a) (ii) of resolution II);

(d) Registration fee (para. 7 (a) of resolution II);

(e) Transfer of technology (para. 12 (a) (iii) of resolution II);

(f) Periodic expenditures (para. 7 (c) of resolution II);

(g) Funds for the Enterprise (para. 12 (b) (i) of resolution II);

(h) Periodic reports (paras. 5 (b) and 12 (b) (ii) of resolution II).

[LOS/PCN/L.67/Rev.1]

24. These consultations continued during the summer meeting (1988) of the Preparatory Commission. At the seventh session of the Commission in 1989, these consultations were resumed. Then it became apparent that certain matters relating to the discharge of obligations, in particular an agreement on a programme of exploration required the assistance of the group of technical experts.

25. Accordingly the Group of Technical Experts was convened to prepare a comprehensive exploration plan from the first stages of exploration to the stage where a decision for exploitation could be taken. The Group of Technical Experts was also requested to assist the Preparatory Commission in matters relating to the training of personnel (LOS/PCN/L.77).

26. The reports of the Group of Technical Experts provided the basis for resolving the difficulties relating to the implementation of the obligations of the registered pioneer investors and their certifying States (LOS/PCN/BUR/R.5 and LOS/PCN/BUR/R.6). In the light of these reports of the group of technical experts and after further consultations, the Chairman submitted a revised version, dated 31 August 1989, of the paper he had already informally distributed on 3 March 1989. At the eighth session of the Preparatory Commission, held in Kingston in 1990, the issue was extensively discussed and substantial progress was made and during the summer meeting the General Committee, on behalf of the Preparatory Commission, unanimously adopted the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex).

27. The four registered pioneer investors agreed to provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the training programme approved by the Preparatory Commission, taking into account the report of the Group of Technical Experts (LOS/PCN/BUR/R.6). The cost of such training shall be borne by the pioneer investors.

28. With respect to exploration the registered pioneer investors (France, Japan and the Soviet Union) undertook to carry out free of cost the preparatory work and stage I of the plan for exploration contained in the report of the Group of Technical Experts (LOS/PCN/BUR/R.5).

29. As regards stage II of the exploration plan, it was understood that "this will be agreed upon following the completion of stage I and the review of the results obtained, taking into account the decision of any pioneer investor to undertake stage II of the plan of exploration in the area allocated to it. The terms and conditions for such further exploration shall be agreed upon in accordance with resolution II, paragraph 12 (a) (i)."

30. Once these three pioneer investors have satisfactorily complied with the obligations concerning training and exploration, their duty under resolution II, paragraph 7 (b), to pay US$ 1 million per annum shall be waived as from the date of their registration.

31. It was agreed that India will undertake, if so requested, a programme of exploration in accordance with resolution II, paragraph 12 (a) (i), of one mine site for the Enterprise in the area reserved for the Authority in the Indian Ocean. India's obligation to pay the annual fixed fee of US$ 1 million was also waived "as part of the overall understanding".

32. Under this understanding the Group of Technical Experts, within three months of the deposit of the Convention's sixtieth instrument of ratification or accession, has to review the state of deep seabed mining and make an assessment as to when commercial production may be expected to begin. If the group concluded that commercial production will not take place for an extended period of time, the Preparatory Commission shall recommend to the Authority that the annual fixed fee should be waived for a relevant period (LOS/PCN/L.87, annex, para. 12).

33. It may be noted that on the adoption of the understanding, the Chairman stated:

(i) Should any agreement be made which would affect this understanding in any way, such adjustments as may be necessary shall be made to it;

(ii) The required date for the submission of a plan of work by each registered pioneer investor under resolution II, paragraph 8 (a), shall be reviewed in the light of the assessment of the Group of Technical Experts in accordance with paragraph 12 of the understanding.

34. At the 51st meeting of the plenary held on 31 August 1989, the Preparatory Commission adopted a training programme for the Enterprise (LOS/PCN/SCN.2/L.6/Rev.1). The plenary at its 55th meeting (1990) subsequently adopted the recommendations of Special Commission 2 on the implementation of the Preparatory Commission Training Programme.

35. On 22 August 1990 the Preparatory Commission received an application for pioneer investor status from China on behalf of the China Ocean Mineral Resources Research and Development Association (COMRA). At the ninth session (1991) of the Preparatory Commission the General Committee, having considered the report of the Group of Technical Experts on China's application (LOS/PCN/BUR/R.7), registered COMRA as a pioneer investor.

36. At the ninth session also, the Preparatory Commission received an application from Bulgaria, Cuba, the Czech and Slovak Federal Republic and the Union of Soviet Socialist Republics for registration of the Interoceanmetal Joint Organization as a pioneer investor. At the summer meeting of 1991 the General Committee, having considered the report of the Group of Technical Experts on this application (LOS/PCN/BUR/R.8), registered the Interoceanmetal Joint Organization as a pioneer investor. It may be noted that the Preparatory Commission decided to include Cuba in the list of States having the right to apply as pioneer investor. Cuba was not listed among the States referred to in paragraph 21 of the 1986 statement of understanding as having the right to apply for pioneer investment status (LOS/PCN/L.41, annex, para. 21).

37. At the summer meeting in 1991 the Chairman of the Preparatory Commission continued his informal consultations which he had begun at the ninth session on the implementation of the obligations of the registered pioneer investor, COMRA. The only issue then left to be resolved concerned the matter of similar treatment for future applicants.

38. At the tenth session of the Commission, the consultation on the implementation of the obligations of the registered pioneer investor, COMRA, reached a successful conclusion. The General Committee on behalf of the Preparatory Commission unanimously adopted on 12 March 1992 the understanding on the fulfilment of obligations by the registered pioneer investor and its certifying State, the People's Republic of China. In this understanding the obligation of COMRA, the registered pioneer investor, to pay the annual fixed fee of US$ 1 million was waived.

39. At this session meetings of the General Committee were held to monitor the implementation of the obligations of the registered pioneer investors. On 12 March 1992, the General Committee considered the report of the Group of Technical Experts on the Preparatory Work carried out by the registered pioneer investors India, IFREMER/AFERNOD, DORD and Yuzhmorgeologiya, in accordance with the understanding on the fulfilment of obligations (LOS/PCN/L.87, annex) and approved the recommendation therein.

40. In accordance with the 1986 understanding, the General Committee also received the periodic reports submitted by the registered pioneer investors and their certifying States and took note of them.

41. At this session the General Committee received the second report on the meetings of the Training Panel.

Future work

42. The Chairman of the Preparatory Commission intends at the 1992 summer meeting to undertake consultations on the modalities for the implementation of the obligations of the Interoceanmetal Joint Organization (IOM).

43. In more general terms as far as the implementation of resolution II is concerned the task of the Preparatory Commission is to continue to monitor the implementation of the obligations of the six registered pioneer investors and their certifying States as set out in resolution II, in the statement on the implementation of resolution II of 1986, the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States of 1990, and the understanding on the fulfilment of obligations by the registered pioneer investor, COMRA and its certifying State, the People's Republic of China.

B. Plenary on the Authority

44. Within the framework of the Preparatory Commission, the Plenary on the Authority was entrusted with the task of submitting recommendations concerning draft rules of procedure for the organs of the Authority, its internal administrative and financial management, relationship with other international organizations, in particular the United Nations, budgetary and Secretariat requirements. The provisions of resolution I, related to the work of the Plenary on the Authority, are contained in paragraph 5, subparagraphs (b), (c), (d), (e), (f) and (g) and provide the following:

> "5. The Commission shall:
>
> ...
>
> "(b) Prepare draft rules of procedure of the Assembly and of the Council;
>
> "(c) Make recommendations concerning the budget for the first financial period of the Authority;
>
> "(d) Make recommendations concerning the relationship between the Authority and the United Nations and other international organizations;
>
> "(e) Make recommendations concerning the secretariat of the Authority in accordance with the relevant provisions of the Convention;
>
> "(f) Undertake studies, as necessary, concerning the establishment of the headquarters of the Authority, and make recommendations relating thereto;
>
> "(g) Prepare draft rules, regulations and procedures, as necessary, to enable the Authority to commence its functions, including draft regulations concerning the financial management and the internal administration of the Authority."

45. The areas of responsibilities assigned to the Plenary on the Authority within the framework of the Preparatory Commission could be divided into the following three categories:

(a) Preparation of draft rules of procedure for the organs of the Authority;

(b) Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the parties to the Convention on the Law of the Sea;

(c) Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority.

46. The progress that has been achieved so far, with regard to each of these categories of issues is discussed below.

(a) Preparation of draft rules of procedure for the organs of the Authority

47. The Plenary on the Authority was established in its present form at the second session of the Preparatory Commission held in March-April 1984. It started its work with the examination of the draft rules of procedure of the Assembly and subsequently proceeded to the consideration of the draft rules of procedure of the Council, the Legal and Technical Commission, and the Economic Planning Commission. By the end of its summer session of 1988, the Plenary on the Authority had completed two readings of all the draft rules. Some provisions were left pending. No agreement has so far been reached with regard to these provisions of the draft rules which are related to financial and budgetary matters, decision-making on questions of substance, elections, participation of observers and subsidiary organs. In the course of discussions, the above provisions were identified as the so-called "hard-core" issues and the draft rules which pertain to these issues or are linked to them were set aside, pending consultations of the Chairman with the interested delegations. In response to a request the Secretariat published a document containing the text of all provisions in the draft rules of procedure of the Assembly, the Council, the Legal and Technical Commission and the Economic Planning Commission relating to these hard-core issues (LOS/PCN/WP.44). After the completion of the second reading of the draft rules of procedure of the Assembly, the Council, the Legal and Technical Commission and the Economic Planning Commission, at the request of the Chairman, the Secretariat also circulated the texts of the second revisions of such rules and indicated those rules that remained pending. These revised rules are contained in documents LOS/PCN/WP.20/Rev.2, LOS/PCN/WP.16/Rev.2, LOS/PCN/WP.31/Rev.2, LOS/PCN/WP.36/Rev.2, respectively.

48. It should be mentioned that in connection with the consideration of the draft rules of procedure of the Legal and Technical Commission, the Plenary on the Authority had, at first, proceeded to the examination of special procedures for the approval of plans of work and identified the main elements

of such procedures to be reflected in section VIII of the above rules. Subsequently, it was decided at the seventh session in Kingston in March 1989 that in order to avoid duplication, the rules of procedure of the Legal and Technical Commission should contain only a general provision and that particulars concerning such procedures would be spelled out in the Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area.

49. In accordance with the decision of the Preparatory Commission, the Chairman has undertaken throughout all these years intensive consultations with the interested delegations in an attempt to resolve the pending issues in the draft rules of procedure of the organs of the Authority. The consultations have not been successful. The Chairman of the Preparatory Commission will continue to attempt to resolve these issues before the entry into force of the Convention.

50. In addition to the draft rules of procedure of the organs of the Authority, the Plenary also considered a proposal on the establishment and functioning of the Finance Committee, which originally emerged in the course of discussions of the draft rules of procedure of the Council. Having examined at its sessions in August 1991 in New York and in February-March 1992 in Kingston the latest working paper prepared on this subject by the secretariat (LOS/PCN/WP.45/Rev.1), the Plenary on the Authority reached an agreement on the sections concerning the establishment, nominations, elections, term of office, frequency of sessions, place of sessions and identified, as requiring further consideration, such sections as composition, functions and decision-making.

(b) Preparation of draft agreements concerning the relationship of the Authority with the United Nations, the host country and the Parties to the Convention on the Law of the Sea

51. In discharge of this assignment, the Plenary on the Authority has considered and decided to recommend to the Authority the texts of the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the headquarters of the International Seabed Authority and of the draft Protocol on the Privileges and Immunities of the International Seabed Authority. The Secretariat was requested to publish the final texts of these two instruments incorporating all of the changes.

52. In accordance with its programme of work, the Plenary on the Authority also considered the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority. At its tenth session in Kingston, which was held in February-March 1992, the Plenary succeeded in resolving almost all of the problems arising in connection with that Agreement. The only pending article relates to the reciprocal representation by the Authority and the United Nations in their organs. If discussions on this article are successful, the Plenary will complete the examination of the text of this Agreement at its session in August 1992 in New York.

(c) Submission of recommendations concerning administrative arrangements of the Authority, its initial financial and secretariat requirements, as well as staff and financial regulations of the Authority

53. Owing to the very nature of the administrative and financial arrangements, their consideration could have been initiated only relatively recently, since it would not have been possible to identify earlier with sufficient precision the initial requirements of the Authority in this field. The first and only paper submitted so far on this subject-matter, was presented at the session of the Preparatory Commission, held in August 1990 in New York. It was entitled "Administrative Arrangements, Structure and Financial Implications of the International Seabed Authority" (LOS/PCN/WP.51) and was aimed mainly at facilitating exchange of views between members of the Preparatory Commission. The Plenary on the Authority discussed this paper at the two subsequent sessions of the Commission. The outcome of these discussions is reflected in the respective parts of the reports on the work of the Plenary on the Authority at those sessions (LOS/PCN/L.92, paras. 15-20; LOS/PCN/L.97, paras. 12-19). According to these reports, it appeared from the debate that there was general agreement that the Authority should be both efficient and cost-effective and that its size and structure should meet the needs of the Authority during the initial period of its activities. Therefore, it was suggested during the debate that the structure of the secretariat of the Authority should reflect the concerns for efficiency and cost-effectiveness, taking into account the functions that the Authority will be called upon to perform in the initial stages. It was understood that whatever approach would eventually be chosen to achieve these goals, it should preserve the autonomous nature of the Authority. The administrative and financial arrangements of the Authority have been discussed in several sessions and the Plenary will devote more time to finalizing the consideration of these arrangements.

54. As far as the staff regulations and the financial regulations are concerned, the Plenary on the Authority has not yet considered these matters. In 1983 the Secretariat presented a Working Paper entitled "Suggested Tables of Contents for the Preparation of Draft Rules, Regulations, and Procedures by the Preparatory Commission" (LOS/PCN/WP.14) which contained, among other suggestions, an outline of staff rules and regulations. At its 1991 session in New York, the Plenary on the Authority instructed the Secretariat to prepare guidelines for the drafting of financial regulations of the Authority.

II. SPECIAL COMMISSION 1

A. Introduction

Mandate of Special Commission 1

55. In accordance with paragraphs 9 and 5 (i) of resolution I, the mandate of Special Commission 1 is to "undertake studies on the problems which would be encountered by developing land-based producer States likely to be most

seriously affected by the production of minerals derived from the [international seabed] Area with a view to minimizing their difficulties and helping them to make the necessary economic adjustment, including studies on the establishment of a compensation fund, and submit recommendations to the Authority thereon" (resolution I, para. 5 (i)).

56. The mandate of Special Commission 1 is of a somewhat different nature from that of the other organs of the Preparatory Commission in that it involves undertaking studies which would focus essentially on the potential impact of future seabed mining on the land-based production of the relevant minerals in developing countries, and making recommendations on the basis of the findings of such studies, rather than procedural preparation for the commencement of functions of institutions. In view of the uncertainties, which in recent years have become increasingly wide-ranging, with regard to when and to what extent seabed mining would occur in the future, the mandate of the Special Commission takes on an additional dimension.

Programme of work of the Special Commission

57. The Special Commission started its work during the second session of the Preparatory Commission (spring 1984). With respect to the programme of work to fulfil its mandate, as the Chairman pointed out, "in studying the problems of developing land-based producer States, it is necessary to know, first, which minerals would be produced from seabed sources; second, how the introduction of the minerals from this new source would affect the existing land-based sources; third, what would these effects be and which developing States would be affected; fourth, what problems or difficulties, in connection with these effects, these developing States would encounter; and finally, what could be done to minimize these difficulties" (LOS/PCN/L.2, para. 2). This logically structured framework is reflected in the programme of work adopted by the Special Commission at its first meeting (contained in LOS/PCN/SCN.1/1984/CRP.2), which listed five subject areas corresponding to the five areas of studies in the Chairman's statement above. A list of specific issues falling under each of the five subject areas were then identified in CRP.3, which constituted the detailed programme of work of the Special Commission. It was also the understanding of the Special Commission that "the recommendations (to the Authority) will be the end results of its work (on these subject areas)" (ibid).

58. The subject areas listed in CRP.2 and CRP.3 are: (i) Projection of future production from the international seabed Area; (ii) Relationship between production from the Area and existing land-based production; (iii) Identification, definition and measurement of effects of seabed production on developing land-based producer States; (iv) Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States; (v) Formulation of measures to minimize problems/difficulties of affected developing land-based producer States.

59. In the course of discussion, the interrelationships among the five subject areas became quite obvious, especially those among (ii), (iii) and

(iv). The needs for the relevant data and information were also recognized, and discussed on a number of occasions. Thus, deliberations in many instances were carried out by addressing the subject areas in an interrelated manner. However, for the purpose of a systematic presentation, a relatively distinct division can be made among the following items:

A. Projection of future production from the international seabed Area;

B. Relationship between production from the Area and existing land-based production; Identification, definition and measurement of effects of seabed production on developing land-based producer States; Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States;

C. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States;

D. Data and information needs.

B. Consideration and resolution of issues

60. By mid-1992, the Special Commission has been able to complete the consideration of all the issues under the four items above, except one. The remaining issue, which is one among a number of issues falling under item A above - projection of supply-demand-price of metals contained in seabed minerals - was considered in a preliminary fashion, and there was a presentation by an expert from the World Bank on this topic. The Special Commission plans to complete its consideration of this issue at the next session, based on a background paper to be prepared by the secretariat.

61. A lead-off background paper prepared by the secretariat (LOS/PCN/SCN.1/WP.1) presented an overview of all the issues under the four items above. After the completion of the discussion on this paper, the consideration of a specific issue under an item, in most cases, started with a discussion of a background paper on that issue prepared by the secretariat. The conclusions from such consideration were then negotiated, in a preliminary manner, often based on initial suggestions forwarded by the Chairman, and then incorporated in a comprehensive set of provisional conclusions.

62. During the sixth session of the Preparatory Commission (spring 1988), the Special Commission established an Ad Hoc Working Group (open to all members of the Special Commission) to deal with three "hard-core" issues, one falling under item B above and two under item C. This Group plans to complete its work during the next session.

63. After the completion of consideration of almost all the issues, the Special Commission then considered the matter of its recommendations to the Authority (background paper WP.11 and Chairman's suggestions in CRP.16 and Rev.1). During the seventh session of the Preparatory Commission

(spring 1989), the whole range of provisional conclusions of the deliberations of the Special Commission were drawn up by the Chairman (contained in CRP.16), which can form the basis of its recommendations to be submitted to the Authority, as per its mandate. These provisional conclusions were revised by the Chairman (CRP.16/Rev.1), as a result of discussions in the Special Commission. In the course of discussing the revised conclusions during the ninth session (spring 1991), a 14-member Chairman's Negotiating Group was established by the Special Commission to negotiate, on an ad referendum basis, the provisional conclusions and thereby the recommendations. The Special Commission carried out two rounds of negotiations in the Chairman's Negotiating Group on the first 10 of the 17 provisional conclusions in CRP.16/Rev.1. It is planned to complete negotiations on all the provisional conclusions during the next session.

64. In almost all of the issues falling under the purview of the Special Commission, there were different views of various groups of delegations, initially. By mid-1992, compromises have been achieved or are very close at hand in many issues; however, a few issues remain unresolved.

1. Projection of future production from the international seabed Area

(a) Completion of consideration of issues under the item

65. Under this item, the Special Commission discussed the minerals that may be produced from seabed sources, the metals that may be extracted from these minerals, and the current market situation and future prospects for these metals from land-based sources (background papers WP.2 and Add.1-3). As mentioned above, one issue under this item is yet to be considered fully.

(b) Resolution of issues

66. Issues resolved. Given the lack of certainty as to which minerals would be produced from the seabed in the future and which metals would be extracted from those minerals, one view was that in connection with assisting developing land-based producer States, the Authority should concern itself with all possible minerals that could be exploited from the seabed, while the opposing view was to focus on polymetallic nodules alone since these minerals appear to be the likeliest to be exploited first. It was agreed that

- The Authority should concentrate its work on polymetallic nodules, including the projected timing of commercial production from the Area. It should also keep in view the trends and developments regarding seabed minerals other than polymetallic nodules, for example, polymetallic sulfides, cobalt-rich crusts, etc.

- The Authority should concentrate its work on copper, nickel, cobalt and manganese to be extracted from polymetallic nodules. It should also keep in view the trends and developments regarding the other metals and non-metallic elements contained in polymetallic nodules.

67. It was also agreed that

- The Authority should keep abreast of the forecasts of the mineral situation with and without seabed production in the future.

68. Issues close to resolution. With respect to the forecasts of the mineral situation, while one view was that the Authority should carry out forecasting on its own, another view was to rely on existing forecasts alone for the sake of cost-effectiveness. The resolution of this issue is close at hand, along the following lines:

- The Authority should use existing forecasts as far as practicable, and will carry out forecasting only when no existing forecasts serve its purpose.

2. Relationship between production from the Area and existing land-based production: Identification, definition, and measurement of effects of seabed production on developing land-based producer States: Determination of the problems/difficulties that would be encountered by the affected developing land-based producer States

(a) Completion of consideration of issues under the item

69. Under this item, the Special Commission considered the possible impact of the introduction of metals from seabed sources into the metal markets, the importance of recycling and substitution in the metal markets, and the importance of bilateral trade (background papers WP.2/Add.4, 6 and 7, and WP.13). The Special Commission then considered the issue of identifying land-based producer States likely to be affected by future seabed production (background papers WP.3 and WP.6), and suggestions of the Chairman of the Special Commission and of the Chairman of the Ad Hoc Working Group contained in CRP.8, CRP.18 and Rev.1-3). The Special Commission then considered the issue of measuring effects of future seabed production and problems that may be encountered by developing land-based producer States concomitant with those effects (background papers WP.4 and WP.7, and Chairman's suggestions in CRP.9 and CRP.14).

(b) Resolution of issues

70. Issues resolved. Taking into account the fact that seabed mining will occur only in the future, perhaps more than a decade away, it was agreed that

- At this time the Authority cannot study the above matters with any reasonable degree of precision and accuracy, and therefore, the Authority should focus on pertinent data, information and analysis, and on the projected timing of commercial production from the international seabed Area.

71. It was also agreed that

- The best way to assist developing land-based producer States would be to examine the situation on a case-by-case basis.

- In this context, the process can start with the submission of applications for assistance by developing land-based producer States likely to suffer adverse effects from future seabed production, in the cases where the applications are submitted prior to the commencement of commercial production from the seabed, and by developing land-based producer States which consider themselves adversely affected by seabed production, in the cases where the applications are submitted after the commencement of commercial production from the seabed.

72. One view was that once such applications are submitted, the applicants should be assisted on a more or less automatic basis, while an opposing view held that the really deserving applicants can best be helped only after a determination has been made to that effect. It was then agreed that

- The applications have to substantiate the potential or actual effects, as the case may be, of seabed production; certain criteria should be applied in processing the applications; and most importantly, an in-depth investigation, on a case-by-case basis, should be carried out to assess the relationship between seabed production and land-based production by the applicant, to quantify the effects of seabed production on the export earnings or economy of the applicant, to investigate the problems encountered by the applicant directly linked with the effects, in order to determine what measures would best assist the applicant.

- In this connection the contents of applications, timing and procedures for submission of applications, procedures for processing applications including criteria to determine whether in-depth investigations would be initiated, were agreed upon. An outline of the said in-depth investigation was also agreed upon.

73. Issues close to resolution. In processing the applications, including carrying out the in-depth investigations on a case-by-case basis, the role of the Authority was extensively debated. One group of delegations maintained that existing organizations assisting developing countries and also active in the mineral sector have the requisite resources, expertise, and infrastructures to deal with similar problems, and it is these organizations which should process the applications. The opposing position was that it was the responsibility of the Authority, in particular the Economic Planning Commission, to process the applications. The resolution of this issue is close at hand along the following lines:

- Some kind of cooperative efforts between the Authority and the existing organizations, with the desirable mix of respective roles, can be devised.

74. While it was agreed that certain criteria based on the degree of dependency of the applicant on the four metals concerned (dependency threshold) and on the level of potential or actual effects of seabed production, as the case may be, on the export earnings or economy of the applicant (trigger threshold), and in the cases of applicants with special problems, based on certain safeguard clauses, would be applied in processing the applications, opposing views were held regarding the formulation of the safeguard clauses. One view was to make the safeguard clauses restrictive enough so that the Authority is not overwhelmed with too many applications. Another view was to have fairly lenient safeguard clauses so that applicants are not screened out right at the outset. In the spirit of compromise, a number of alternative safeguard clauses have been suggested by the opposing groups. A resolution along the following lines is close:

- Safeguard clauses with acceptable degrees of restrictiveness and leniency can be devised.

3. Formulation of measures to minimize problems/difficulties of affected developing land-based producer States

(a) Completion of consideration of issues under the item

75. Under this item, there was a large number of documents - background papers on existing measures of organizations, global, interregional, regional and subregional, intergovernmental and non-governmental (WP.5 and Add.1-4); Chairman's summary regarding relevance of these existing measures for developing land-based producer States (CRP.10 and Add.1); background papers on system of compensation/compensation fund (WP.9, WP.10 and WP.12); background paper on commodity agreements (WP.14); various proposals by delegations (by Pakistan in CRP.6 and CRP.17; by Zimbabwe in CRP.7; by the group of Eastern European Socialist countries in WP.8; by the European Economic Community and its member States in CRP.11, CRP.20 and Rev.1; by the Group of 77 in CRP.12 and CRP.21; and by Australia in CRP.15); and suggestions by the Chairman of the Ad Hoc Working Group (CRP.19 and Rev.1 and 2).

(b) Resolution of issues

76. Issues resolved. This was the item which was most extensively debated in the Special Commission. Intensive negotiations over the past few sessions have led to the resolution of a number of issues, as follows:

- Any specific measures or combination of measures that would assist developing land-based producer States, can be taken.

- Adequate resources for implementing the measures are expected to be available.

- There are possibilities that the Authority itself may have some resources to implement measures.

- Assistance to developing land-based producer States should be for the purpose of dealing with changed economic circumstances after seabed production, including economic adjustment, diversification, increased efficiency and productivity in the mineral sector, promotion of growth in other sectors.

- Assistance should be implemented and administered efficiently and in the most cost-effective manner.

77. Unresolved issues. The outstanding issues in which the positions of the various delegations appear to be the hardest to reconcile pertain to the nature and extent of assistance to be provided by the Authority itself to developing land-based producer States and the role that the Authority would have in deciding upon and implementing the assistance measures. Two fundamentally opposing positions were held by the EEC and its member States, on the one hand, and the Group of 77, on the other.

78. As the Chairman stated: "In my view, the thrust of the position of the EEC and its member States is that assistance to be provided to developing land-based producer States actually suffering or likely to suffer adverse effects from seabed production would take the form of economic adjustment assistance alone, and that the requisite measures would be decided upon and implemented by international and/or multilateral organizations, with the Authority having a catalyst's role. The thrust of the position of the Group of 77, in my view, is that the creation of a compensation fund by the Authority for the purpose of assisting [developing land-based producer States] is a valid and specified option the modalities of which should be discussed and analysed, and that whatever measure(s) of assistance is considered - Authority's own measure of compensation or economic adjustment, bilateral measures, existing economic measures of international or multilateral organizations, commodity agreements, anti-subsidy measures, or any combination thereof - the primary responsibility of deciding upon and implementing the requisite measure(s) lies in the Authority as the 'custodian' of the common heritage of mankind under the Convention." (LOS/PCN/L.88, para. 5)

79. Elaborating on its position, "the EEC stated that the overall concern of the EEC and its member States was to achieve a cost-effective use of resources and that the Authority should, therefore, not duplicate the work of international or multilateral organizations which already provide assistance to developing States in the framework of their respective programmes. In their view, the Authority should act as a catalyst and bring together the relevant organizations." (LOS/PCN/L.88, para. 7)

80. On the other hand, "the Group of 77 totally rejected attempts by the EEC to shift the primary responsibility of providing assistance to [developing land-based producer States] from the Authority to the other international and multilateral organizations. The Group stated that the proposal by the EEC that requests for assistance should be directed by the Authority to other organizations with the purpose of studies to be carried out, measures to be taken, and assistance to be provided by the latter, was not only unacceptable

to the Group but clearly would not work. According to the Group, the international or multilateral organizations might not have legal obligations, mandates or budgetary provisions to carry out such studies, take such measures or provide assistance, and that it was not indicated in the EEC proposal how the Authority would ensure that these matters would be taken care of." (LOS/PCN/L.88, para. 36)

81. In the above context, the specific unresolved issues in Special Commission 1 are the following:

- Whether a system of compensation of the Authority and the related compensation fund should be included among the measures;

- Whether resources under the existing measures of the existing organizations would be sufficient or most effective or whether the Authority must have resources of its own for the purpose;

- Whether specific provisions should be made so that resources are available to the Authority, or whether the Authority may be in a position to afford providing resources, from the sources of its income specified in the Convention and after meeting its expenditures specified in the Convention;

- What should be the role of the Authority in implementing and administering the assistance, when it is the measures of other organizations that are being applied; and

- What kind of anti-subsidy measures are needed.

4. Data and information needs

(a) Completion of consideration of issues under the item

82. The data and information needs were, in most cases, considered by the Special Commission in connection with its deliberations on the issues falling under the three previous items (CRP.4 and Add.1). Thus, the Special Commission considered the data and information needs in relation to seabed minerals (WP.2 and Add.1); in relation to the mineral situation - world-wide production, consumption, exports, imports, prices, reserves and resources, etc. - as well as in relation to developing land-based producer States (WP.2/Add.1, 3 and 5); and in relation to existing assistance measures of various organizations, global, interregional, regional and subregional, intergovernmental or non-governmental, that could minimize the problems/difficulties of developing land-based producer States (WP.5 and Add.1-4).

(b) Resolution of issues

83. Issues resolved. While there were some divergences of views between one group of delegations which maintained that the data and information needs of the Authority should cover a wide range of items and another group which maintained that the Authority should focus on a set of items that are directly related to assistance to developing land-based producer States, the issue was ultimately resolved

- By including the categories of data and information and the specific items under the respective categories that are directly related and useful for the purpose of assisting developing land-based producer States.

84. It was also agreed that

- The Authority, at the time when seabed mining becomes imminent or operational, would be in a better position to review the requisite categories, specific items under respective categories, and the degree of detail, and decide thereupon.

85. The manner in which the Authority should collect and maintain data and information was also agreed upon. In this connection, it was agreed that

- The Authority should develop and maintain cost-effective databases; for the purpose of developing and maintaining such databases, wherever possible the Authority should extract data and information from the public domain and from States through voluntary submission by themselves or submissions by them on request.

- For meeting the data and information needs, the Authority should cooperate with, and obtain support from the relevant organizations.

III. SPECIAL COMMISSION 2

A. Introduction

Mandate of the Special Commission

86. According to paragraph 8 of resolution I, the Special Commission for the Enterprise shall:

(a) Take all measures necessary for the early entry into effective operation of the Enterprise; and

(b) Perform the functions referred to in paragraph 12 of resolution II.

87. Paragraph 12 of resolution II, in its chapeau, establishes the objective of ensuring that the Enterprise is able to carry out activities in the Area in

such a manner as to keep pace with States and other entities. To that end, it requires that

"(a) every registered pioneer investor shall:

"(i) carry out exploration, at the request of the Commission, in the area reserved, pursuant to paragraph 3 in connection with its application, for activities in the Area by the Authority through the Enterprise or in association with developing States, on the basis that the costs so incurred plus interest thereon at the rate of 10 per cent per annum shall be reimbursed;

"(ii) provide training at all levels for personnel designated by the Commission;

"(iii) undertake before the entry into force of the Convention, to perform the obligations prescribed in the Convention relating to transfer of technology;

"(b) every certifying State shall:

"(i) ensure that the necessary funds are made available to the Enterprise in a timely manner in accordance with the Convention, upon its entry into force; and

"(ii) report periodically to the Commission on the activities carried out by it, by its entities or natural or juridical persons."

Programme of work

88. The Special Commission commenced its work with the adoption of the programme of work contained in document LOS/PCN/SCN.2/1984/CRP.1 and decided to give first priority to its consideration of the application of paragraph 12 of resolution II, and consideration of the preparatory measures that could be undertaken in accordance with the provisions of that paragraph; secondly, to a consideration of the structure of the Enterprise and in particular, the structure and requirements for its start-up establishment; and thirdly, to an examination of operational options, beginning with an evaluation of the joint venture option for the initial operation of the Enterprise as follows:

(i) Application of resolution II, paragraph 12, including

(a) Development of a training scheme

(b) Other measures to be taken under paragraph 12

(ii) Establishment of the organizational structure of the Enterprise

(a) Draft rules of procedure of the Governing Board

(b) Draft Staff Rules

(c) Draft Financial Rules

(d) Establishment of the principal office of the Enterprise

(e) Administrative and financial arrangements

(iii) Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise:

(a) Elaboration of operational options

(b) Project formulation

(c) Supplementary procedures for conduct of operations

(iv) Formulation of recommendations for the initial operation and administration of the Enterprise

(v) Other questions, including

(a) Coordinative arrangements for dealing with matters relating also to the work of other bodies of the Preparatory Commission

(b) Establishment of an information programme on seabed resource development, including in particular, an information system on technology suppliers.

89. Item (iv) in the programme of work was recognized as mostly being a distillation of the conclusions that would be reached in the course of work on items (i), (ii) and (iii). With regard to item (v), it was understood that the need for coordination with other bodies would be addressed as and when necessary, and that the requirement for an information programme on seabed resource development, as indicated in item (v)(b), would be identified in the course of the Special Commission's future work. 1/

90. The Special Commission initially envisaged its work as encompassing the full range of preparatory work needed to facilitate the implementation of the Convention and to assure the ability of the Enterprise "to keep pace" with registered pioneer investors, in the event that seabed mining was ready to commence at the time of entry into force of the Convention. It thus adopted a comprehensive approach which would allow it to produce a detailed set of generally applicable recommendations and draft rules as to the organizational structure, policies, management and operations of the Enterprise, as well as a set of distinct recommendations with respect to the initial operations and administration of the Enterprise, recognizing the need to allow for evolution. 2/ This approach also determined the scope and content of its initial working papers. 3/ With respect to its mandated functions under resolution II, the Special Commission from the beginning, paid special attention to the need to organize a training scheme.

91. It must be noted, however, that the approach adopted to the Commission's work underwent substantial changes as a result of delays in the registration of pioneer investors and the consequent arrangements for the implementation of resolution II introduced by the Preparatory Commission. With the exception of the establishment of a training scheme, the special preparatory functions set forth in paragraph 12 of resolution II have been dealt with outside Special Commission 2.

92. It must be noted also, that the likelihood of the entry into force of the Convention being coincidental with the economic viability of a seabed mining industry was increasingly questioned, with consequent effects on the approach adopted and the priorities accorded by the Special Commission to the different elements of its work. During the resumed fourth session (1986, New York), when it became clear that the prospects for seabed mining were unfavourable and that there was little likelihood of its coincidence with the entry into force of the Convention, certain modifications in the programme of work of the Special Commission were introduced. Several of these modifications reflected a new understanding of the general scope and content of the recommendations that the Special Commission could most usefully prepare to ensure "early entry into effective operation of the Enterprise" (its mandate under resolution I) and its ability to keep pace with the activities of pioneer investors (its mandate under resolution II). There were thus three sufficiently distinct sets of recommendations contemplated:

(a) Those that addressed the first operations of the Enterprise and that would necessarily need to take account of the economic conditions for seabed mining;

(b) Those that dealt with basic administrative, management and procedural matters, that would be unaffected by the timing of operations and that would permit the Enterprise to function as a distinct entity, without unnecessary delay; and,

(c) Those that addressed the implementation of paragraph 12 of resolution II and that may or may not be organically linked to recommendations on the first operation. 4/

93. Of particular note was the Special Commission's introduction of a special mechanism (the Chairman's ad hoc Advisory Group on Assumptions) to monitor economic factors pertinent to the question of seabed mining viability. That need, shared also by Special Commission 1, had not been envisaged at the outset. Also notable was its general conclusion that virtually any concrete recommendation it could make on both operational and organizational matters would need to be revised as and when economic prospects for mining improve. 5/

94. As a result, from 1986 to the present, the work of Special Commission 2 focused on three main areas: development and establishment of a training programme; organizational structure of the Enterprise and consideration of a recommendation regarding a pre-operational Enterprise; and on operations of the Enterprise including project feasibility analysis, an agreed set of working assumptions and the initial operation of the Enterprise.

B. Application of resolution II, paragraph 12

Development of a training scheme

95. With respect to its mandated functions under resolution II, the Special Commission, from the beginning, paid special attention to the need to organize a training scheme. While the basic design of the training programme was grounded on the scope of the training obligation of the pioneer investors, Special Commission 2 began to introduce an important distinction in its work as between the formulation of basic planning guidelines and modalities for a training programme, and decisions as to its actual implementation.

96. An Ad Hoc Working Group on Training with a mandate to draft the principles, policies, guidelines and procedures for a Preparatory Commission training programme was established by the Special Commission during the fifth session of the Preparatory Commission (1987, Kingston). At the resumed sixth session (1988, New York), the Ad Hoc Working Group on Training submitted the "Principles and Policies for a Training Programme to be instituted by the Preparatory Commission" (LOS/PCN/SCN.2/1988/CRP.3) to the Special Commission and at the seventh session (1989, Kingston), it submitted to the Commission the "Draft Guidelines and Procedures for the Implementation of the Training Programme" (LOS/PCN/SCN.2/1989/CRP.4). Special Commission 2 concluded that there was basic agreement on the documents and that they provided the basis for the work on training. 6/ Following a request by the Special Commission, these documents went through a few drafting changes to become document LOS/PCN/SCN.2/L.6/Rev.1, "Principles, Policies, Guidelines and Procedures for a Preparatory Commission Training Programme".

97. LOS/PCN/SCN.2/L.6/Rev.1 was adopted first by Special Commission 2 and then by the Preparatory Commission during the resumed seventh session (1989, New York). During the eighth session (1989, Kingston) the Preparatory Commission adopted LOS/PCN/SCN.2/L.7, "Implementation of the Preparatory Commission Training Programme. Recommendations of Special Commission 2".

98. During the ninth session (1992, Kingston), the Training Panel was constituted with 21 members selected on the basis of the principle of equitable geographical distribution and, including one expert from each of the registered pioneer investors. 7/ The Panel held its first meeting during the resumed ninth session (1991, New York) and decided that traineeships should cover five engineering disciplines (chemical/metallurgical, electrical, electronic, mechanical and mining), marine geology, marine geophysics and marine ecology as set forth in LOS/PCN/BUR/R.9.

99. At the tenth session (1992, Kingston), the Training Panel approved the training programmes offered by France and Japan (each of which was for three traineeships starting in November 1992 and May 1993 respectively), established the minimal qualifications of applicants for the training programme, developed criteria for selecting candidates and approved a note verbale announcing the training programmes of France and Japan. 8/ The Training Panel will meet during the first week of the resumed tenth session (1992, New York). At this

meeting it will select six candidates for the programmes of Japan and France, review the revised training programmes offered by the Russian Federation and India, and the training programme offered by Germany. 9/ As a number of registered pioneer investors and technologically advanced States who may be interested in offering training programmes have not yet submitted their training programmes, the Training Panel will have to continue to meet in the future to review these programmes, and, following the receipt of candidates for these programmes, make a selection. It will also have to meet to review the actual training programmes and their results.

Other measures to be taken under paragraph 12

100. As noted earlier, with the exception of the establishment of a training scheme, the special preparatory functions set forth in paragraph 12 of resolution II were assigned to the Plenary of the Preparatory Commission and were therefore dealt with outside Special Commission 2.

C. Establishment of the organizational structure of the Enterprise

101. As early as its initial exchange on the Enterprise's organizational structure and given its perception of present and predicted economic conditions, the Special Commission called for a pragmatic approach to planning for the "early entry into effective operation of the Enterprise" and stressed that the initial Enterprise might best be regarded as a nucleus establishment capable, however, of maturing quickly under favourable operating conditions. 10/

102. At the request of the Special Commission in 1984, document LOS/PCN/SCN.2/WP.2, entitled "The Enterprise - start-up requirements and preparatory measures", was prepared to facilitate its work in this regard. As a result of its discussion on this working paper, the Special Commission recognized the need to elaborate a possible structure and organization for the Enterprise that took into account the extent to which operational modalities would affect organizational matters, and also the need to establish the Enterprise with a minimal and flexible arrangement that would enable it to respond to favourable operating circumstances.

103. An outgrowth of the discussions of LOS/PCN/SCN.2/WP.2 was an additional request concerning the development of an expert team for the Enterprise and the process for facilitating their recruitment by the Enterprise. Document LOS/PCN/SCN.2/WP.7, entitled "Development of an ad hoc expert core group for the Enterprise to assist the preparatory Commission", was prepared in response to this request. In 1986 (New York), the Special Commission requested a new working paper that would be useful in a discussion of an initial "nucleus" Enterprise should delays in the projected start-up of seabed mining persist at the time of the establishment of the Enterprise. A "nucleus" Enterprise would be recommended in order to provide for continued pre-feasibility work. 11/

104. The working paper prepared by the secretariat at the Special Commission's request, LOS/PCN/SCN.2/WP.12, entitled "A nucleus Enterprise", bore a resemblance, in terms of functions, to the earlier notion of a "core expert group" contained in document LOS/PCN/SCN.2/WP.7. The monitoring, evaluation and continued preparatory functions contained in the report that would need to be performed in the pre-feasibility period were generally accepted by the Special Commission. Also accepted was the necessity of keeping personnel and costs to a minimum during that period. However, some differences arose as to the proper status that should be accorded such a "nucleus", pre-operational Enterprise.

105. Following these discussions, the Special Commission requested a working paper on the general framework provided in annex IV to the convention which contains the statute of the Enterprise to help it to focus on what the powers, functions and internal procedures of a nucleus Enterprise should be. 12/ The working paper LOS/PCN/SCN.2/WP.16 of 22 February 1989, entitled, "Provisions of the convention relating to the structure and organization of the Enterprise", proved to be a useful means of focusing attention on the constituent elements of the Enterprise, as well as a means of identifying those provisions of the Convention that required annotations. It also helped to identify those elements that would form the substance of transitional arrangements to deal with the pre-operational stage of the Enterprise. 13/

Structure and organization

106. In its consideration of working paper LOS/PCN/SCN.2/WP.16, the Special Commission set as its purpose: to allow the Preparatory Commission to comment on provisions of the Convention in the interest of promoting reasonable interpretation; to suggest additional draft provisions to facilitate effective application; and to suggest additional draft rules on matters such as the confidentiality requirement, on which the Convention has no rule relating to the Enterprise. As a result of the discussion and comments made on LOS/PCN/SCN.2/WP.16, the Special Commission's final recommendations to the Plenary of the Preparatory Commission on the structure and organization of the Enterprise are contained in document LOS/PCN/SCN.2/L.8 of 14 August 1991, entitled "Recommended Annotations by Special Commission 2 on the Provisions of the Convention Relating to the Structure and Organization of the Enterprise".

Transitional arrangements for the Enterprise

107. As a result of its discussions of LOS/PCN/SCN.2/WP.12 and WP.15, the Special Commission requested its Chairman to prepare a short paper setting forth the main elements that would form the substance of transitional arrangements to deal with the pre-operational stage of the Enterprise. 14/ Documents LOS/PCN/SCN.2/1990/CRP.5 and Add.1 and 2 set forth the purpose of transitional arrangements, the functions to be performed under the transitional arrangements, the status and structure of the institutional arrangements and rules applicable to the transitional arrangements.

108. At the most recent session (1992, Kingston), the Acting Chairman, in an effort to assist the Special Commission to conclude its debate on this issue and be in a position to make a recommendation to the Assembly, proposed the following method as a means for the Special Commission to communicate its conclusions:

> "Pursuant to its mandate, Special Commission 2 had devoted considerable effort in grappling with this issue. Most recently, this has occurred in CRP.5 and Addenda 1 and 2, which have been debated both formally and informally. What has emerged from these discussions is a widely held view that, in the light of the prolonged delay in the development of deep seabed mining activities, it is unlikely that the Enterprise would be able to undertake operational activities for quite some time. Therefore, in the initial phase what will likely be needed is some initial institutional arrangement which could be activated as circumstances dictate. At the same time, it was recognized that the operations of the Enterprise should be based on sound commercial principles and that it should be autonomous and free from political domination.
>
> "Just as the drafters of the Convention were unable successfully to forecast when commercially viable seabed mining would commence, we should also avoid a similar peril and not, at the present time, attempt to devise concrete operational structures for the Enterprise in the interim period. Let us remember that our task in Special Commission 2 is to provide our best advice, based on all available information, to the Assembly on how to deal with these unforeseen circumstances.
>
> "The proposal, therefore, is that the Special Commission advise the Assembly to proceed on the basis of an evolutionary approach where the functions of the Enterprise, laid down in the Convention for its efficient operation, are filled and carried out according to the dictates of the prevailing circumstances. We could go as far as to say that the functions enumerated in Part II of CRP.5 represent our best judgement on the activities to be undertaken by the Enterprise in this interim period.
>
> "The Assembly will have to judge the best way in which these and any other functions are to be carried out and the functional mechanisms and initial status and structure of the Enterprise during the transitional period. Moreover, it should also be kept in mind that there is a general view on the need to minimize the costs to States Parties while at the same time safeguarding both the effective operation of the Enterprise and its ability to evolve in an orderly fashion, as circumstances dictate, into a viable participant in deep seabed mining." 15/

D. Development of policies and feasibility studies in preparation for the early entry into effective operation of the Enterprise

Operations of the Enterprise

109. From the first consideration of this topic, attention was focused on the initial period, which was described in 1984 in LOS/PCN/SCN.2/WP.2, as beginning "under favourable conditions" in the third year, with the pre-investment stage of operations in the fifth year. At the same time, it was also recognized that there would be a critical period in the six months following entry into force, since it would be then that the financial situation would become clear and when registered pioneer investors would be anticipated to exercise their acquired rights.

110. Also evident from the beginning of its work, had been the Special Commission's recognition of the need to give priority attention to joint ventures as an operational option of the Enterprise, particularly for its first venture. 16/

Project feasibility analyses

111. The first discussions of the Enterprise's operations took place on the basis of LOS/PCN/SCN.2/WP.6 of 5 February 1985, which had been prepared in response to the Special Commission's request for a complete project profile for the Enterprise, as provided for in article 170 of the Convention. 17/ That working paper, entitled "Project profile of a deep seabed mining operation by the Enterprise", which relied for its data and methodology on pre-existing, readily available studies, concentrated on evaluating the options available to the Enterprise (i.e., joint ventures, leasing/service contracts, Enterprise as sole operator and mixes thereof according to the phase of work), according to financial and manpower requirements.

112. While that working paper was predicated on the underlying assumption of the perceived economic viability of seabed mining and also drew attention to the large number of uncertainties involved, questions were none the less raised as to the basic framework of the profile, particularly as to the parameters listed in its paragraph 20, and their reflection of present and predicted conditions in the minerals industry and markets. 18/

113. To demonstrate some of the issues involved, the delegation of Australia undertook a special study, incorporating more recent data and submitted it in document LOS/PCN/SCN.2/WP.10 of 14 January 1986, entitled "Economic viability of deep seabed mining of polymetallic nodules". That working paper gave a pessimistic assessment of the economic viability of seabed mining which was attributed to the state of the metal markets. It stated that in the light of the prevailing economic trends, particularly the metal prices for cobalt, copper, manganese and nickel, increases in aggregate metal prices, to as high as twice their levels at March 1985, would be required to make the mining venture viable. It concluded that given the metal price outlook, deep seabed mining for polymetallic nodules is unlikely to be undertaken on a commercial basis for the foreseeable future.

Chairman's Advisory Group on Assumptions

114. Consequent upon the discussion of LOS/PCN/SCN.2/WP.10, the Special Commission recognized the need to keep the matter of assumptions under review. It therefore created in 1986 (New York session) an Ad Hoc Group on Assumptions, later to become a permanent feature of the Special Commission's work. The Group was required to report regularly as to whether, in the light of the latest data, a new study updating LOS/PCN/SCN.2/WP.10 could be undertaken by the Government of Australia. To date, the Group has concluded that the time has not yet come. At the most recent session (1992, Kingston), the Group stated that its work required continuity and that during the period before the Convention enters into force, the body that succeeds the Group on Assumptions should concentrate on, inter alia, periodic analyses of world markets, metal prices, etc. 19/

Initial operation

115. From its first consideration of this topic, the Special Commission recognized the need to give priority attention to joint ventures as an operational option of the Enterprise, particularly for its first venture. The advantages of joint ventures from the viewpoint of practicality and minimization of risks were stressed, as were the advantages for both mining and processing, particularly with regard to transfer of technology and development of manpower. Nevertheless, it was agreed that the first option to be studied in detail was that of the Enterprise as sole operator of a fully integrated project.

116. Consequent upon the discussions of LOS/PCN/SCN.2/WP.6 and LOS/PCN/SCN.2/WP.10, when the Special Commission decided that any concrete recommendation it drew on operational matters might need to be revised as and when economic prospects for mining improved, consideration of the Enterprise as sole operator in its initial operations were deferred. 20/

117. The Special Commission decided at the most recent session (1992, Kingston) that it was ready to submit its final recommendation on the subject of a joint venture as the preferred option for the Enterprise in its initial operation. This recommendation would include all the documents which have been presented to the Commission on the subject of joint ventures, in particular, the Commission's comments on the draft basic joint venture contract contained in documents LOS/PCN/SCN.2/WP.18 and Add.1 of 9 and 10 August 1990, respectively. In this regard, the Special Commission emphasized that research and development, an essential component of high-technology ventures such as seabed mining, should be included within the scope of the joint venture contract as that would advance the cause of the Enterprise. 21/

IV. SPECIAL COMMISSION 3

A. Introduction

118. Special Commission 3 was charged with the mandate to prepare rules, regulations and procedures for the exploration and exploitation of polymetallic nodules in the Area, i.e. the seabed mining code. Special Commission 3 commenced its work (under the Chairmanship of Mr. Hans Sondaal of the Netherlands) by identifying the issues contained in annex III, article 17, which require rules, regulations and procedures. These issues are: administrative procedures relating to prospecting, exploration and exploitation in the Area; the size of areas (mine sites); duration of operations; performance requirements including assurances, pursuant to article 4, paragraph 6 (c) of annex III of the Convention; categories of resources; renunciation of areas; progress reports; submission of data; inspection and supervision of operations; prevention of interference with other activities in the marine environment; transfer of rights and obligations by a contractor; procedures for transfer of technology to developing States in accordance with article 144 of the Convention and for their full participation in activities in the Area; mining standards and practices, including those relating to operational safety; conservation of marine resources and protection of the marine environment; definition of commercial production; qualification standards for applicants; establishment of uniform and non-discriminatory costing and accounting rules and the method of selection of auditors; apportionment of proceeds from mining operations; the incentives referred to in article 13 of annex III of the Convention; implementation of decisions taken pursuant to article 151, paragraph 10, and article 164, paragraph 2 (d), of the Convention. Though the list of issues provided for in annex III, article 17, is extensive, it is not exhaustive. There are matters relating to the conduct of activities in the Area which are not included in that article, such as:

(a) Protection of human life (art. 146);

(b) Erection, emplacement and removal of installations used for carrying out activities in the Area (art. 147, para. 1);

(c) Prescription of period other than five years for issuance of production authorizations (art. 151, para. 2 (a));

(d) Implementation of paragraph 7 of article 151;

(e) Criteria and procedures for the implementation of the sponsorship requirements (annex III, art. 4, para. 3);

(f) Objective and non-discriminatory standards for the purpose of selection among applicants for production authorizations (annex III, art. 7, para. 2);

(g) Financial matters other than those referred to in annex III, article 17, e.g. annex III, article 13.

119. To facilitate its consideration of these issues, Special Commission 3 requested the Secretariat to prepare draft working papers on which the discussions in the Special Commission would be based.

120. In 1984, the Secretariat prepared a series of working papers:

(a) LOS/PCN/SCN.3/WP.1 - Seabed Mining Code (Background Paper);

(b) LOS/PCN/SCN.3/WP.2 - Draft Regulations on Prospecting, Exploration and Exploitation - application for approval of plans of work (Background Paper);

(c) LOS/PCN/SCN.3/WP.2/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area (application for approval of plans of work);

(d) LOS/PCN/SCN.3/WP.3 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background Paper);

(e) LOS/PCN/SCN.3/WP.3/Add.1 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - content of application;

(f) LOS/PCN/SCN.3/WP.4 - Draft Regulations on Prospecting, Exploration and Exploitation - content of application (Background Paper);

(g) LOS/PCN/SCN.3/WP.5 - Draft Regulations on Prospecting, Exploration and Exploitation in the Area - payment of fee (Background Paper).

121. After the discussion of the working papers listed in the paragraph above, and in order to provide a focus and a tool for further deliberations, the Special Commission requested the Secretariat to prepare a comprehensive document incorporating the contents of the above-mentioned papers in the form of draft regulations. This document was issued in 1985 as LOS/PCN/SCN.3/WP.6 (Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area) and was accepted by the Special Commission as the basis for discussion.

122. The Special Commission later requested the Secretariat to prepare a series of addenda to document LOS/PCN/SCN.3/WP.6 in order to complete the set of working papers required to discharge its mandate. The following is a brief description of the contents of the working papers and of the discussions conducted in Special Commission 3.

B. Discussion of working papers

1. LOS/PCN/SCN.3/WP.6/Add.6

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area

123. The document was discussed during 31 formal and informal meetings of Special Commission 3 and the central issue of the discussions was the "one-stage/two-stage" application procedure, i.e. whether or not the designation of an area and the application for approval of a plan of work should be considered as one or two separate stages.

124. The reasons for supporting the one-stage approach were that: (a) the Convention does not provide for a two-stage procedure; (b) the Authority should not be placed at a disadvantage in obtaining knowledge of the particulars of the area for which an application was submitted; (c) since the Authority was responsible for the selection of the reserved area, it was necessary for the Authority to have access to as much information as possible to enable it to make an informed decision on its selection; (d) in the absence of a plan of work for each of the two areas (one for the applicant, one reserved for the Authority), the Authority would have to rely solely on geological data which would not be sufficient for an accurate assessment of the equal commercial value of both areas.

125. On the other hand, the reasons for supporting the two-stage approach were that: (a) it had a legal basis in the Convention; (b) an applicant was not obliged to draw up a plan of work for the Enterprise since the Enterprise was an independent body; (c) it was not practical to draw up two plans of work since this would be costly and the plan of work for the Enterprise would probably be out of date by the time the Enterprise went into commercial production; (d) since the designation of areas would be done by random selection, it would obviate the need for submission of any data and would be the best guarantee for selecting two areas of equally estimated commercial value.

126. In June 1988 the Chairman of Special Commission 3 (Mr. Jaap Walkate of the Netherlands) after revising document LOS/PCN/SCN.3/WP.6, taking into account the views expressed in the discussion, issued document LOS/PCN/SCN.3/WP.6/Rev.1. In order to resolve the "one-stage/two-stage" question, the Chairman proposed that the application should be submitted in two parts: the first part containing data and information to be submitted by the applicant before the designation of the area and the second part containing data and information to be submitted by the applicant before the final approval of the plan of work.

2. LOS/PCN/SCN.3/WP.6/Add.6/Rev.1

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Procedures for Application, Approval and Issuance of Production Authorizations

127. The document was discussed during nine meetings of the Special Commission.

128. Some of the views supported the production limitation formula since it was felt that it would help integrate and stabilize mineral markets when seabed mining was in production. Concern was also expressed about the effects of unrestricted or subsidized seabed mining operations on producers and consumers alike.

129. Other views characterized the production limitation formula as an artificial restraint both on the commencement of seabed mining and on production levels. It was emphasized that the formula itself was one of the serious obstacles to universal acceptance of the Convention.

3. LOS/PCN/SCN.3/WP.6/Add.2

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract

130. The document was discussed at 30 meetings of Special Commission 3 and one of the main concerns expressed in the discussions regarded the present system of taxation, as prescribed in the Convention. Some of the issues raised in this context were whether the required payments imposed too heavy a burden on seabed miners and whether the choice of the system of payment which may involve an annual fixed fee, a production charge or a combination of a production charge and a share of net proceeds was too complicated.

131. In the course of discussions varying views were expressed. On the one hand, it was felt that: changed economic and market circumstances called for a review of the system of payment and the rates of taxation; the front-end payments that were to be incurred before mining income was generated were onerous; it was preferable to establish two levels of annual fixed fees - one for exploration only and the other for exploration and exploitation.

132. On the other hand it was stated that: before mining income was generated, a reasonable payment should be made once prospective deep seabed miners had secured exclusive mining areas and had obtained exploration rights; lower rates of taxation of the mining income would not only reduce the revenues of the Authority, but could also give rise to the possibility that deep seabed miners would have a competitive advantage in comparison with land-based miners through a more lenient tax system; mining States would diminish the revenue benefits for the Authority by seeking a reduction in tax revenues to it while imposing their own national taxes on operators.

133. Document LOS/PCN/SCN.3/WP.6/Add.2 was revised by the Chairman taking into account views expressed in the discussions and was issued as document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1 on 25 May 1989.

4. LOS/PCN/SCN.3/WP.6/Add.3

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area - Draft Financial Terms of Contract (Draft Regulations on Financial Incentives)

134. The document was discussed at two meetings of Special Commission 3. Differing views were expressed as to whether incentives should be an integral component of the financial rules or whether they should be provided solely at the discretion of the Authority and only in exceptional circumstances.

135. The reason for favouring the incentives as an integral part of the financial rules was that the rules would then contain a clear mechanism and an institutional framework based on stable criteria and non-discriminatory procedures under which uniform and predetermined incentives would be provided automatically in compliance with conditions detailed in advance.

136. The other point of view was that the provision of financial incentives should not be viewed as creating an exception to the financial terms of contract. The availability of incentives should not be automatic but should be awarded on an ad hoc, case-by-case basis at the discretion of the Authority. It was also suggested that the provision of such incentives should not amount to subsidizing seabed mining, especially to the detriment of land-based mining.

137. Since the discussion concentrated mostly on procedural rather than substantive issues, the Chairman decided not to revise the original draft but to include it as Part B in document LOS/PCN/SCN.3/WP.6/Add.2/Rev.1, which contained the revised draft financial terms of contract.

5. LOS/PCN/SCN.3/WP.6/Add.4

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Draft Regulations on the Transfer of Technology until Ten Years after Commencement of Commercial Production by the Enterprise)

138. The document was discussed at 28 meetings of Special Commission 3 and it set out, inter alia, procedures for the Enterprise to follow if it failed to obtain deep seabed mining technology on the open market at fair and reasonable commercial terms and conditions.

139. The working paper attempted to strike a balance between the obligation of the Enterprise to undertake adequate efforts to procure technology on its own,

and the obligation of the contractor to assist it, and if required, to negotiate acceptable terms for its sale if the Enterprise fails to obtain such technology.

140. Two differing views were expressed in the discussion.

141. According to one view the seabed mining technology to be transferred to the Enterprise should cover processing technology as well. It was also felt that "essential interests of [a State Party's] security", referred to in article 302 of the Convention, should not constitute a loophole for States seeking to avoid technology transfer obligations. If the technology could not be transferred for security reasons, it could not be utilized by the operator in the international seabed area, since this would be disadvantageous to the Enterprise. It was further suggested that procedures requiring that the organs of the Authority review their decision to invoke a contractor's undertaking to transfer technology could cause unnecessary delays and obstruct the implementation of transfer obligations.

142. According to the other view the provisions for the compulsory transfer of technology were a disincentive to investment and technology development and that the Convention did not envisage the transfer of processing technology. It was pointed out that in regard to seabed mining technology, the Enterprise should adhere to regular commercial practices since adequate technology would be available on the open market. The Enterprise would be assisted by contractors who would provide general descriptions of equipment and methods of such technology and information as to where similar technology may be obtained. It was also suggested that joint ventures would provide the most effective means for the transfer of technology which would be subject to conditions to be agreed among the parties concerned.

143. The working paper of the secretariat (LOS/PCN/SCN.3/WP.6/Add.4) was revised by the Chairman and was issued as document LOS/PCN/SCN.3/WP.6/Add.4/Rev.1 on 9 August 1990.

6. LOS/PCN/SCN.3/WP.6/Add.5

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Protection and Preservation of the Marine Environment from Activities in the Area)

144. The document was discussed at 25 meetings of the Special Commission. In the course of discussions it became clear that all States wished to ensure the protection and preservation of the marine environment. However, it was also felt that very little was known at present regarding the environmental consequences of deep seabed mining and that significantly more long-term and substantial research would have to be conducted to enable informed decisions to be made at the appropriate time.

145. The paper was revised by the Chairman (Dr. Gregory Alan French of Australia, who had assumed the chairmanship of Special Commission 3) following several sessions of informal consultations and was issued under a new title, "Protection and preservation of the marine environment from unacceptable changes resulting from activities in the Area" in document LOS/PCN/SCN.3/WP.6/Add.5/Rev.1 on 27 August 1991.

7. LOS/PCN/SCN.3/WP.6/Add.6

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accommodation of Activities in the Area and in the Marine Environment)

146. The document was discussed at five meetings of Special Commission 3. There was a convergence of views that all relevant activities should be accommodated in the Area and in zones outside national jurisdiction as long as these activities did not interfere with one another. It was felt also that while it was important to promote the principle of "reasonable regard", some priorities might have to be determined and that the role of competent international organizations should be more clearly defined.

147. All these issues were addressed in informal consultations conducted by the Chairman which enabled him to revise the working paper and to issue it as document LOS/PCN/SCN.3/WP.6/Add.6/Rev.1 on 28 June 1991.

8. LOS/PCN/SCN.3/WP.6/Add.7

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Accounting Principles and Procedures)

148. The document was discussed at 15 meetings of the Special Commission. Two main views evolved from the discussion: on the one hand it was felt that complicated accounting principles and procedures were not required, especially if the contractor selected the production charge system of paying revenues to the Authority. It was pointed out that once the quantities of polymetallic nodules recovered and the amounts of processed metals produced by the contractor were known, the production charge system would be simple enough to avoid the need for detailed examination of the contractor's accounting records.

149. The other view was that, while there were practical distinctions between payment options, these distinctions should not be seen as exempting some of the contractors from complying with accounting principles and procedures applicable to others. Furthermore, the Authority should retain the right to examine the contractor's accounting records since they would have to contain information and data other than the system of payment, e.g. development costs and other costs borne by the contractor.

150. It was also felt that even if the choice was made to pay only the production charge, it would not be sufficient to create a situation where the Authority would not be empowered to verify how the contractor determined the production charge he would be required to pay. It was further argued that the Authority, in order to dispel any doubts about how the production charge was determined, should have access to all information that goes beyond the quantity of nodules and the average market price of processed metals.

151. In the light of the discussions of opposing views in several sessions of informal consultations, the Chairman intends to prepare a revision of the working paper during the inter-sessional period prior to the summer 1992 meeting of the Preparatory Commission in New York.

9. LOS/PCN/SCN.3/WP.6/Add.8

Draft Regulations on Prospecting, Exploration and Exploitation of Polymetallic Nodules in the Area (Labour, Health and Safety Standards)

152. The document was discussed at six meetings of the Special Commission in which varying views were expressed.

153. According to one view existing conventions adopted under the auspices of the International Maritime Organization and the International Labour Organisation, as well as national legislation on health and safety standards, are adequate to cover activities in the Area and therefore it was not necessary to duplicate the provisions of those conventions in the seabed mining code.

154. On the other hand, it was stated that although existing conventions were relevant, seabed mining would be a unique activity requiring new standards since current ones would not be appropriate in all cases.

155. Following discussions in informal consultations, the Chairman intends to revise the working paper during the inter-sessional period prior to the summer 1992 meeting of the Preparatory Commission in New York.

10. Conclusion

156. The publication of documents LOS/PCN/SCN.3/WP.6/Add.7/Rev.1 and LOS/PCN/SCN.3/WP.6/Add.8/Rev.1 will mark the completion of the preparation and the initial revision by the Secretariat and the Chairman of the Special Commission of all the working papers required to draft the seabed mining code. Whilst progress has been made in identifying and resolving some issues, the Special Commission, has not yet reached final agreement on any of the working papers.

157. There is a general perception that the Special Commission has only limited time available to discharge its mandate in the most effective manner possible. In order to address this fact, a draft final report of the Special Commission will be available for consideration at the summer 1992 meeting of the Preparatory Commission in New York.

V. SPECIAL COMMISSION 4

A. Introduction

Mandate

158. The mandate of the Preparatory Commission is to be taken from its constitutive instrument, namely resolution I. The preamble to the resolution notes the purposes for the fulfilment of which the Commission is established, which are:

> "... to take all possible measures to ensure the entry into effective operation without undue delay of the Authority and the Tribunal and to make the necessary arrangements for the commencement of their functions" (second preambular paragraph).

159. With respect to preparations for the International Tribunal for the Law of the Sea, the mandate is further defined in paragraph 10 of the resolution which states:

> "The Commission shall prepare a report containing recommendations ... regarding practical arrangements for the establishment of the International Tribunal ..."

160. The recommendations concerning the Tribunal would constitute a separate and distinct report and do not form part of the final report prepared by the Preparatory Commission for submission to the Assembly (resolution I, para. 11). The report on the preparatory work regarding the Tribunal is to be submitted to the Meeting of States Parties convened under annex VI, article 4, of the Convention. It should encompass all practical arrangements necessary for the Tribunal to function without undue delay.

161. The requirement for "practical arrangements"* implies that the mandate is more comprehensive than that required for the Authority. It requires recommendations on: the formal structure; the judicial procedure and internal rules; agreements relating to the headquarters; and an international agreement on privileges and immunities. It would extend to such practical arrangements as: the location and site; the evaluation of the building arrangements; and internal administrative, personnel, budgetary, financial and funding requirements. These are the prerequisites for the early and initial functioning of the Tribunal. 22/

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* Emphasis added.

Agenda and organization of work

162. The provisional agenda adopted by the Special Commission is contained in LOS/PCN/SCN.4/1984/CRP.1 and Rev.1. Its mandate was initially elaborated in LOS/PCN/SCN.4/WP.1 (prepared by the Secretariat). When considering its work programme the Commission first decided to take up the items listed in paragraph 3 of LOS/PCN/SCN.4/WP.1, with the addition of Relationship Agreements as referred to in Part II of that Working Paper. The Commission also expressed the need to prepare rules for the Meeting of States Parties and recommendations for the election of Members of the Tribunal. It did not consider it appropriate to prepare a comprehensive list of issues and items for its programme of work since additional items may be considered necessary as work progressed. For each session of the Preparatory Commission, the requirements for the programme of work were further elaborated as necessary and priorities established by the Special Commission on the recommendation of its Bureau and the initiative of its Chairman. The method of work was also established and the Commission dealt with the items under its work programme on that basis.

B. Status of work

163. The most recent assessment of the status of work in the Special Commission presented at the ninth session in 1991 is contained in document LOS/PCN/SCN.4/1991/CRP.39, which sets out what has been completed and what is yet to be completed.

164. The current status of work in the Special Commission may, for the purpose of convenience, be reviewed under the following items:

1. Judicial procedure

(a) Progress of work

165. The Commission first considered the requirements for the procedural rules of the Tribunal and examined the items listed in LOS/PCN/SCN.4/WP.1. Account was taken of LOS/PCN/SCN.4/1984/CRP.2 to 5 in this connection. Thereafter, the Secretariat was requested to prepare draft procedural rules (LOS/PCN/L.4, para. 10).

Draft rules of the Tribunal (LOS/PCN/SCN.4/WP.2)

166. This working paper was reviewed article by article by the Commission. The Commission also considered some other outstanding matters on which rules could not be formulated until the Commission had first discussed the issues. During the course of this review, the Secretariat was also requested to prepare supplementary draft rules for procedures concerning the prompt release of vessels and crews in relation to article 292 of the Convention (as noted on p. 34 of LOS/PCN/SCN.4/WP.2 and in LOS/PCN/SCN.4/L.1).

Supplement to the draft rules of the Tribunal - on the prompt release of vessels and crews (LOS/PCN/SCN.4/WP.2/Add.1)

167. This working paper was also reviewed article by article by the Special Commission.

Table of concurrence of the draft rules of the Tribunal (LOS/PCN/SCN.4/WP.3)

168. This reference paper was provided by the Secretariat as requested by the Commission for its deliberations on the rules of the Tribunal.

169. The review of these working papers is reflected in the Chairman's summaries of discussions (LOS/PCN/SCN.4/L.2 and Add.1 and Add.1/Corr.1, L.3 and Add.1, L.4 and Add.1, L.5 and Add.1). The Secretariat was requested to prepare a revised draft taking into account the deliberations in the Special Commission, the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1984/CRP.6, LOS/PCN/SCN.4/1985/CRP.7 to 10 and 12 to 14, LOS/PCN/SCN.4/1986/CRP.15 to 18) and the suggestions of a drafting nature; and to provide compromise texts on those issues where no agreement was reached in the Special Commission.

Draft rules of the Tribunal (LOS/PCN/SCN.4/WP.2/Rev.1, Parts I and II) (Revised)

170. The revised working paper was considered by the Special Commission. The deliberations are reflected in the Chairman's summaries of discussions (LOS/PCN/L.7 and Add.1, L.9/Add.1, L.10 and Add.1 and Add.1/Corr.1). The Secretariat has been requested to formulate a final draft of the rules of the Tribunal, taking into account these deliberations, the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1986/CRP.20, LOS/PCN/SCN.4/1987/CRP.22, LOS/PCN/SCN.4/1988/23 and Rev.1, 25, 23 to 30, LOS/PCN/SCN.4/1989/32 and 37), the suggestions of a drafting nature, and to provide compromise texts on those issues where no agreement was reached in this Special Commission. This would be reviewed by the Special Commission if time permits, as decided by the Commission (LOS/PCN/L.53, para. 9).

(b) Pending issues

171. Composition of the Tribunal and its chambers. In connection with the geographical distribution and the representation of the principal legal systems, the Special Commission expressed the view that firm and detailed rules should not be established. However, the principles to be applied in making such determinations would be needed. The Special Commission considered it useful for relevant proposals and recommendations to be made by the Preparatory Commission for consideration by the Meeting of States Parties. The Secretariat was therefore requested to draw up a comparative table regarding the alternatives for distribution of the six additional seats after fulfilling the minimum geographical representation requirement. The Chairman stated that the consideration of the request could be taken up after the consideration of all the issues concerning the composition of the Tribunal was over (LOS/PCN/SCN.4/L.1). This is yet to be concluded.

172. Official working languages of the Tribunal. The official languages and those in which its pleadings and judgements would be issued have yet to be decided. The Special Commission has decided to hold these questions in abeyance, pending consultations which are ongoing. For these reasons the draft rules contain no specific provision in this connection. This pending issue also affects other working papers (LOS/PCN/SCN.4/WP.8 and Add.1 and Corr.1, Add.2 and Corr.1 and 2).

173. Harmonization of jurisprudence. The need to provide a means to achieve harmonization of the jurisprudence of the Tribunal and its chamber was raised. While a proposal was made as to how this can be achieved, no final determination was made by the Special Commission (LOS/PCN/SCN.4/L.3, para. 99).

(c) Other matters

174. Internal judicial practice. As a supplement to the rules, provisions have to be formulated on the internal judicial practice. Rule 21 of the draft rules (LOS/PCN/SCN.4/WP.2/Rev.1/Part I) recognizes the requirement for a resolution to be formulated in this connection, consistent with the practice of the International Court of Justice. The formulation of such a draft resolution is specially important if a phasing-in scheme is adopted where all the Judges are not available at the start-up phase. (See sect. IV below in relation to LOS/PCN/SCN.4/WP.8 and Add.1 and 2 thereto and LOS/PCN/SCN.4/L.7, paras. 27-30.)

175. Access by States not parties to the Convention. A resolution or other means setting out the terms for access to the Tribunal by States not parties to the Convention would have to be formulated. This is consistent with the provision made in connection with the International Court of Justice regarding the participation of States parties to the Statute of the Court which are not States Members of the United Nations as provided in General Assembly resolution 91 (I) of 11 December 1946.

2. International Agreements/Protocols

(a) Progress of work

176. The Commission first discussed the requirements for a headquarters agreement (LOS/PCN/SCN.4/WP.1, para. 7). It also discussed the question of privileges, immunities and facilities in relation to the Tribunal and its work. These discussions took into account the items listed in LOS/PCN/SCN.4/WP.1, paras. 3 and 5 to 7. Account was also taken of LOS/PCN/SCN.4/WP.4, which identifies issues for consideration, and also LOS/PCN/SCN.4/1985/CRP.8 and 9. The summary of this review is contained in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.9). Thereafter, the Secretariat was requested to prepare a draft Headquarters Agreement (LOS/PCN/L.47, paras. 2-3) and a draft instrument on the privileges and immunities of the Tribunal (LOS/PCN/L.53, para. 19 (c)).

Draft headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5, Parts I and II)

177. The working paper was reviewed article by article by the Special Commission. The review is reflected in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.11 and Add.1). The Secretariat was requested to prepare a revised draft of the working paper, taking into account the deliberations in the Special Commission and the suggestions of a drafting nature; and to provide compromise texts on those issues where no agreement was reached in the Special Commission.

Revised draft headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany (LOS/PCN/SCN.4/WP.5/Rev.1 and Corr.1)

178. The revised working paper presented by the Secretariat was considered and approved by the Special Commission. 23/ Taking into account these deliberations, the suggestions of a drafting nature, and providing compromise texts on those issues where no agreement as to the formulation was reached in the Special Commission, the Secretariat has been requested to formulate a final draft of the headquarters Agreement. In doing so, to the extent possible the revised text would be harmonized with the Revised Protocol on Privileges and Immunities of the Tribunal.

Draft Protocol on the Privileges and Immunities of the International Tribunal (LOS/PCN/SCN.4/WP.6)

179. The working paper was reviewed article by article by the Special Commission. The review is reflected in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.13 and Add.1). The Secretariat was requested to prepare a revised draft of the working paper, taking into account the deliberations in the Special Commission, the draft text proposed for specific provisions (LOS/PCN/SCN.4/1989/CRP.31 and 33 to 35), and the suggestions of a drafting nature; and to provide compromise texts on those issues where no agreement was reached (LOS/PCN/L.91, para. 10).

Revised draft Protocol on the Privileges and Immunities of the International Tribunal (LOS/PCN/SCN.4/WP.6/Rev.1 and Corr.1 and 2)

180. The revised working paper presented by the Secretariat was considered and approved by the Special Commission. Taking into account these deliberations, the draft texts proposed for specific provisions (LOS/PCN/SCN.4/1991/CRP.41 to 44), suggestions of a drafting nature, and providing compromise texts on those issues where no agreement as to the formulation was reached, the Secretariat has been requested to formulate a final draft of the Protocol on Privileges and Immunities. In doing so, to the extent possible the revised text would be harmonized with the Revised Headquarters Agreement.

(b) Other matters

181. Laissez-passer. A strong reservation was made by one delegation concerning the use of the United Nations laissez-passer by the Tribunal.

3. Relationship arrangements

(a) Progress of work

Issues concerning relationship agreements between the International Tribunal for the Law of the Sea and other international organizations (LOS/PCN/SCN.4/WP.7)

182. The Commission first discussed the issues contained in this working paper presented by the Secretariat which had been requested by the Special Commission (LOS/PCN/L.61, para. 19 (c)). These discussions took into account the issues listed in LOS/PCN/SCN.4/1989/CRP.36. Thereafter, the Secretariat was requested to prepare a draft Relationship Agreement between the United Nations and the Tribunal, the Principles of Relationship Arrangements between the Tribunal and the Authority, and also the Elements of Supplementary Arrangement between the Tribunal and the International Court of Justice (LOS/PCN/L.76, para. 12 (b); L.81, para. 13; and L.91, para. 17).

Draft relationship arrangement between the United Nations and the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.9 and Add.1)

183. The working paper was reviewed by the Special Commission as reflected in the Chairman's summary of discussions (LOS/PCN/SCN.4/L.15) and the Secretariat has been requested to provide a revised working paper taking into account these deliberations, the suggestions of a drafting nature, and providing compromise texts on those issues where no agreement was reached. Consideration also needs to be given to the views expressed in the Commission regarding the need for maximum economy in establishing the Tribunal and its functioning while maintaining the highest possible level of efficiency (LOS/PCN/L.86, para. 5). The final draft would be reviewed by the Commission.

Principles governing relationship arrangements between the International Tribunal and the International Seabed Authority (LOS/PCN/SCN.4/WP.10)

184. The working paper was reviewed by the Special Commission and the Secretariat would have to report on the deliberations and suggestions of the Commission.

Supplementary arrangements between the Tribunal and the International Court of Justice

185. The elements of supplementary arrangements between the Tribunal and the International Court of Justice (ICJ) were not formulated in a working paper since the preparation of such a paper was to take into account the views of

ICJ. Consequent upon the communication from the Registrar of ICJ, the Special Commission decided that it would not consider such relationship arrangements and that it would be left to the Tribunal and Court to determine on an ad hoc basis and as appropriate the relationship arrangements that may be required.

(b) Pending issues

186. Budgetary review. The Commission did not reach a conclusion as to whether the Budget of the Tribunal should be submitted for review by the budgetary bodies of the United Nations. No agreement was reached in this connection (LOS/PCN/SCN.4/L.15, p. 11).

187. Coordination of the review by the Plenary of the appropriate Commission and Special Commission 4 of the elements for a relationship arrangement between the Tribunal and the Authority has yet to take place and a determination has to be made as to the drafting of a relationship agreement (LOS/PCN/L.86, para. 9).

4. Administrative arrangements

(a) Progress of work

188. The Special Commission had before it three working papers presented by the Secretariat in response to its requests:

(a) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8);

(b) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - Addendum: Supplementary cost estimates reflecting alternatives as to official working languages (LOS/PCN/SCN.4/WP.8/Add.1 and Corr.1);

(c) Administrative arrangements, structure and financial implications of the International Tribunal for the Law of the Sea - Addendum: A scheme to phase in the establishment of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.8/Add.2 and Corr.1).

189. The first working paper was reviewed by the Special Commission and in doing so the Commission also took into account the addenda to this working paper. These documents have been preliminarily discussed. No conclusions have been reached, particularly regarding the working languages; geographic representation among Members in the alternative schemes for phasing in; and the options as to the initial phases. The consideration of this working paper has not been concluded.

Issues concerning the initial financing and budget of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.11)

190. At the request of the Special Commission the Secretariat presented a working paper. The Commission has yet to review this working paper or the issues contained therein.

(b) Pending issues

191. Administrative arrangements. The working paper and its addenda (LOS/PCN/SCN.4/WP.8 and Add.1 and 2) have been preliminarily discussed. No conclusions have been reached, particularly regarding the working languages; geographic representation among members in the alternative schemes for phasing in; and the options as to the initial phases.

192. Control of the budget. There is no agreement in the Special Commission as to which body should control the financing of the Tribunal. A suggestion was that it could be controlled by the Finance Committee of the Authority. The other delegations were opposed to this idea and would prefer a creation of a separate Finance Committee which will be appointed by the Meeting of States Parties. Another suggestion was that the Tribunal follow the practice of other international organizations and the budget be submitted to the United Nations for review by and recommendations of its budgetary bodies such as the Advisory Committee on Administrative and Budgetary Questions.

193. First budget. The Special Commission has yet to discuss the requirements for the first budget of the Tribunal for presentation to the Meeting of States Parties.

194. Scale of assessments. The Special Commission will have to further consider this issue and formulate an interim arrangement pending adoption of a final scale of assessments.

195. Draft financial rules and Staff Regulations. Although the working papers are to be prepared and submitted to the Meeting of States Parties, the principles governing these issues would, however, have to be discussed in the Special Commission for guidance of the Secretariat.

5. Site and building requirements

(a) Progress of work

196. The Commission has before it the reports of the host country on the designation of the site in Hamburg and the progress made in evaluating the requirements and planning for the building and equipment needs of the Tribunal. The relevant documents in this connection are:

(a) Preliminary information on the establishment of facilities for international courts and tribunals (LOS/PCN/SCN.4/1986/CRP.19);

(b) Brief progress report on the preparations for the housing of the International Tribunal for the Law of the Sea in Hamburg - submitted by the delegation of the Federal Republic of Germany (LOS/PCN/SCN.4/L.6);

(c) Second report on practical arrangements for the installation of the International Tribunal for the Law of the Sea at Hamburg - submitted by the delegation of the Federal Republic of Germany (LOS/PCN/SCN.4/L.8);

(d) Report of the Chairman dated 21 March 1988 on the visit of Special Commission 4 and officials of the United Nations Secretariat to the Federal Republic of Germany (LOS/PCN/SCN.4/L.12);

(e) Letter dated 15 March 1989 from the Chairman of the delegation of the Federal Republic of Germany addressed to the Special Representative of the Secretary-General for the Law of the Sea (LOS/PCN/106);

(f) Report of the delegation of the Federal Republic of Germany on the building requirements and facilities for the International Tribunal on the Law of the Sea in Hamburg (LOS/PCN/SCN.4/L.16).

197. The Special Commission has received these reports and has taken note of the arrangements made in this connection. It also took note of the report and the specifications provided in LOS/PCN/SCN.4/L.16, in considering the requirements and facilities for the Seat of the Tribunal.

(b) Pending issues

Building requirements for the Seat of the Tribunal

198. The Special Commission will have to make a final review of the arrangements for inclusion in the report of the Commission to the Meeting of States Parties for its approval. The Special Commission has yet to consider the final arrangements to make its recommendations.

6. Consultations regarding the seat

(a) Progress of work

199. The Chairman of the Special Commission has been conducting consultations on the question concerning the requirement that the host country for the Tribunal should be a party to the Convention by the time of its entry into force, as referred to in paragraph 38 of the Final Act of the Third United Nations Conference on the Law of the Sea. The Commission considered the following:

(a) Informal proposal of the Bureau (LOS/PCN/SCN.4/1986/CRP.21);

(b) Letter dated 16 April 1987 from the Chairman of the Group of 77 addressed to the Chairman of the Preparatory Commission (LOS/PCN/85).

(b) Pending issues

200. Consultations on this question with a view to coming to a generally acceptable solution, would need to be continued and concluded (LOS/PCN/L.96, paras. 8 to 9, LOS/PCN/L.101, para. 8).

7. Rules for meeting of States parties

(a) Progress of work

201. The principles to govern the rules of procedure for the Meeting of States Parties are to be formulated by the Secretariat for inclusion in the report to the Meeting (LOS/PCN/L.81, paras. 15 and 17).

(b) Pending issues

202. The preparation of the required working paper would require an initial review by the Special Commission in order to provide guidance in the preparation of recommendations.

8. Report to the Meeting of States parties

(a) Progress of work

203. The Special Commission has decided that it would consider the form and content of the draft report of the Special Commission containing recommendations on the practical arrangements for the Tribunal to be submitted to the Meeting of States Parties (LOS/PCN/L.81, para. 15).

(b) Pending issues

204. Given the number of documents and issues yet to be reviewed and finalized by the Special Commission, the preparation and consideration of the final report would have to await those conclusions and the finalization of the documents before the report can be prepared and presented to the Plenary for its approval. The Special Commission expressed its wish to finish its programme of work at the next meeting in August 1992 (LOS/PCN/L.101, para. 13).

Notes

1/ LOS/PCN/L.5 of 11 April 1984, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

2/ LOS/PCN/SCN.2/WP.1 of 27 February 1984, "Special Commission for the Enterprise - Mandate and Programme of Work".

Notes (continued)

3/ LOS/PCN/SCN.2/WP.2 of 17 July 1984, "The Enterprise - start-up requirements and preparatory measures". This document, in particular, set forth the full range of considerations.

4/ LOS/PCN/L.40 of 4 September 1986, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

5/ LOS/PCN/L.40 of 4 September 1986, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission", para. 3.

6/ LOS/PCN/L.65 of 1 September 1988 and LOS/PCN/L.70 of 22 March 1989, "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

7/ LOS/PCN/L.92 of 21 March 1991, para. 33.

8/ LOS/PCN/BUR/R.15.

9/ Ibid.

10/ LOS/PCN/L.5 of 11 April 1984, para. 3.

11/ LOS/PCN/L.40.

12/ LOS/PCN/L.65, para. 29.

13/ At the seventh session (1989, Kingston), the Special Commission concluded that considerable progress had been made in understanding the issues involved in dealing more concretely with the question of a nucleus Enterprise. It accepted the idea that the question was best dealt with by means of a transitional arrangement which did not disturb the constitution of the Enterprise as laid down in the Convention, and which was limited to a specified period that might be lengthened or shortened by the Authority depending on the circumstances at the time.

14/ LOS/PCN/L.80 of 30 March 1990, para. 13.

15/ LOS/PCN/L.100 of 11 March 1992, para. 16.

16/ In its consideration of this operational option for the Enterprise, the Special Commission reviewed a number of documents. These were:

(a) LOS/PCN/SCN.2/L.2/Rev.1 and 2 of 10 August 1984 and 21 August 1985, the revised proposal by the delegation of Austria for a "Joint Enterprise for Exploration, Research and Development in Ocean Mining (JEFERAD)", introduced at the second informal meeting during the second session;

Notes (continued)

(b) LOS/PCN/SCN.2/WP.3 of 21 August 1984, containing an "Information note on elements of joint ventures" (second session);

(c) LOS/PCN/SCN.2/WP.4 of 27 August 1984, a "Proposal on a joint venture", made by the delegations of Belgium, France, the Federal Republic of Germany, Italy, Japan, the Netherlands and the United Kingdom;

(d) LOS/PCN/SCN.2/WP.5 of 15 October 1984, "Model Joint Venture Agreement for Seabed Mining", submitted by the Federal Republic of Germany;

(e) LOS/PCN/SCN.2/WP.18 of 9 August 1990, "Draft Basic Joint Venture Contract, Explanatory Memorandum"; and

(f) LOS/PCN/SCN.2/WP.18/Add.1 of 10 August 1990, "Draft Basic Joint Venture Contract".

17/ LOS/PCN/L.10, para. 14, of 4 September 1984, entitled "Statement to the Plenary by the Chairman of Special Commission 2 on the progress of work in that Commission".

18/ LOS/PCN/L.20 of 2 April 1985, paras. 12-14.

19/ LOS/PCN/L.100 of 11 March 1992, para. 29.

20/ LOS/PCN/L.40 of 4 September 1986, para. 4.

21/ LOS/PCN/L.100 of 11 March 1992, para. 9.

22/ The elaboration of practical measures was considered significant in the case of the Tribunal since it has neither a governing assembly nor an executive body entrusted with the task of setting up, monitoring or supervising the activities of the Tribunal. The recommendations made to the meetings of the States Parties to be convened must be comprehensive and viable. They should be of such a nature as to limit the duration of such a plenipotentiary meeting. The meeting is not contemplated as a periodic meeting, except that for the purpose of election of judges it would meet every three years.

23/ The deliberations are to be reflected in the Chairman's summary of discussions, to be issued subsequently.

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PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY AND FOR THE
INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
Tenth session
New York, 10-21 August 1992

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the summer meetings of the tenth session of the Preparatory Commission, the Special Commission had before it the following documents:

(a) LOS/PCN/L.103, Progress Report of the Chairman of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea; Part IV dealing with the work of Special Commission 4;

(b) LOS/PCN/SCN.4/WP.11, Issues Concerning the Initial Financing and Budget of the International Tribunal for the Law of the Sea;

(c) LOS/PCN/SCN.4/L.16/Add.1, Building Requirements and Facilities for the International Tribunal for the Law of the Sea; Information from the delegation of Germany concerning the circulation of a brochure with information on the final design with illustrations, drawings and specifications;

(d) LOS/PCN/SCN.4/WP.12, Suggestions of the Latin American and Caribbean Group regarding languages of the Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.2/Rev.1; LOS/PCN/SCN.4/WP.8 and Adds.1 and 2); and

(e) LOS/PCN/SCN.4/WP.13, Proposal submitted by Austria, Belgium, Canada, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Poland, Senegal and Switzerland concerning the languages of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.2/Rev.1; LOS/PCN/SCN.4/WP.8 and Add.1 and 2).

/...

2. The Special Commission held a total of six meetings, starting with the 155th meeting at which, on the recommendation of the Bureau, it designated one of its vice-chairmen, Dr. Theodore Chalkiopoulos (Greece) to act as Chairman. The Contact Group of the Group of 77 on Special Commission 4 was allocated some of the meeting time of Special Commission 4 for co-ordination purposes.

3. The Commission took up at its 155th meeting its Agenda and Programme of Work for the current meeting as contained in document LOS/PCN/L.101 of 11 March 1992.

4. On the recommendation of the Bureau the Chairman proposed and the Special Commission approved the changes to the programme of work to the effect that:

(1) the Commission would take up, as the first item of work, item 6 of the agenda in LOS/PCN/L.101 concerning the final Report. It would carry out a preliminary overview of the draft final Report as to the "form and content";

(2) the Special Commission should decide that:

(a) there would be no further deliberations on working papers that have been approved by the Special Commission. These would be annexed to the draft final Report for submission to the Meeting of States Parties as recommendations of the Preparatory Commission;

(b) all pending issues listed in the Progress Report (LOS/PCN/L.103) and possibly the remaining items on the agenda for the session (LOS/PCN/L.101) would be referred to the Meeting of States Parties for solutions. They would be submitted without a recommendation from the Preparatory Commission. A statement as to the status of review of each item by the Preparatory Commission would be attached;

(3) if time permits, the remaining items on the agenda for the session (LOS/PCN/L.101) would be taken up; and

(4) the Secretariat was requested to prepare an outline for a draft final Report to be made available at the end of the first week of the session. This would be taken up for consideration in the second week.

These proposals were approved by the Special Commission subject to the clarification that the preparation of an outline for the draft final Report would not prevent delegations from submitting proposals or working papers on issues of concern to them.

5. At the 157th meeting, the Chairman informed the Special Commission that the draft outline for a final Report had been prepared by the Secretariat but it would not be issued until it was available in all languages. At its 156th to 158th meetings, it took up Issues Concerning the Initial Financing and Budget of the International Tribunal for the Law of the Sea on the basis of the working paper LOS/PCN/SCN.4/WP.11. Further information was requested in relation to the precedent as to initial financing in the case of the United Nations University and as regards the Permanent Court of International Justice of the League of Nations. Attention was drawn to the precedent of a regional judicial institution for the settlement of disputes among Arab States. A view expressed was that courts should not be financed by individual States and in that view the precedent of the United Nations University was inappropriate. The deliberations in the Special Commission will be reflected in the Chairman's summary of discussions to be issued.

6. Consultations were held during the session between interested delegations on the question of languages to be used by the Tribunal. Two working papers were presented: Suggestions of the Latin American and Caribbean Group regarding languages of the Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.12); and Proposal submitted by Austria, Belgium, Canada, Côte d'Ivoire, Czechoslovakia, France, Greece, India, Poland, Senegal and Switzerland concerning the languages of the International Tribunal for the Law of the Sea (LOS/PCN/SCN.4/WP.13).

7. On the issue of the building requirements and facilities for the Seat of the International Tribunal for the Law of the Sea and following up on the report presented by the delegation of Germany (document LOS/PCN/SCN.4/L.16) at the tenth session in Kingston as referred to in para. 3 therein, the delegation presented an addendum conveying information that the final design with illustrations, drawings and specifications has now been circulated to all Member States of the United Nations, to the States participating in the Preparatory Commission and to the secretariat of the Commission.

8. The Bureau of the Special Commission recommended that the agenda for the eleventh session in Kingston would comprise a single item: consideration of the draft final Report and its approval, after its examination. At its 159th meeting several

delegations addressed this proposal. Some delegations expressed the need to consider pending items on which no agreement had been reached in the Special Commission, at future meetings, besides considering the draft for the final Report. Another view expressed was that only the draft final Report should be considered and that all pending issues could be dealt with in a different forum. Several compromise proposals were put forward by delegations. The Chairman also made a compromise proposal. Finally the Special Commission accepted the proposal of Saudi Arabia that the agenda would be "to survey and consider the draft final Report including the pending issues", with two delegations expressing reservations.

9. The Acting Chairman expressed his appreciation and gratitude for the positive atmosphere that had prevailed in the conduct of the Commission's work and his thanks to all delegations for the cooperation extended to him. He thanked the members of the Bureau, Mr. Simeon Raya (Philippines), Dr. Nicolas Salom (Colombia) and Mr. Ahmed Yousif Mohamed (Sudan) for the advice and guidance provided during this session. The Acting Chairman extended his and the Commission's gratitude to the Secretary of the Special Commission, Mr. Gritakumar E. Chitty, and to Mrs. Gertrude Blake for the dedication and competence with which they performed their functions. He also thanked Ms Anita Pinto and the other members of the Secretariat who had assisted.

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INTERNATIONAL SEABED AUTHORITY
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Tenth session
New York, 10-21 August 1992

STATEMENT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During the present session, the Plenary dealt with the following matters:

(a) Organization of work;

(b) Preparation of draft agreements, rules, regulations and procedures;

(c) Implementation of resolution II;

(d) The Training Panel;

(e) Provisional reports;

(f) Eleventh session of the Preparatory Commission.

I. ORGANIZATION OF WORK

2. At the summer meeting of the Preparatory Commission, on the recommendation of the General Committee, the Plenary adopted on 10 August 1992 a programme of work for this meeting of the Commission which enabled all the special commissions and the Plenary on the Authority to meet. The programme was adopted on the understanding that changes would be made as circumstances required. In accordance with the decision of the Preparatory Commission, the Training Panel met during the first week simultaneously with the meeting of the Preparatory Commission.

II. PREPARATION OF DRAFT AGREEMENTS, RULES, REGULATIONS AND PROCEDURES

3. At its first meeting, held on 11 August 1992, at the suggestion of the Chairman, the Plenary on the Authority adopted its programme of work for the present session. According to that programme the Plenary decided to begin its work with the consideration of the pending functions of the Finance Committee and then to proceed to consider the first paragraph of article 7 on reciprocal representation which was left pending in the draft Agreement concerning the Relationship between the United Nations and the International Seabed Authority. It was agreed that subsequently the Plenary would resume its consideration of the matters related to the administrative arrangements, structure and financial implications of the International Seabed Authority. According to the programme the Plenary was supposed to conclude its work by initiating the examination of the provisional final report. To facilitate discussions on the above issues, it was decided that the Plenary would first address them at the level of the consultations of the Chairman with the interested delegations and that the results of such consultations would be subsequently submitted to the Plenary for its consideration and approval.

4. In accordance with the above programme of work, the Plenary on the Authority commenced its work at the level of consultations, with the consideration of a revised version of function 12, proposed by one delegation at the end of the previous session of the Commission at Kingston. The revised text envisaged that the Finance Committee could make recommendations to the Council and the Assembly on the rules, regulations and procedures, as proposed by the Governing Board of the Enterprise, on the transfer of funds from the Enterprise to the Authority as well as on the proposal of the Governing Board of the Enterprise concerning the portion of the net income of the Enterprise to be retained as a reserve of the Enterprise. Having discussed the proposal, participants in the consultations agreed that the Finance Committee should make such recommendations to the Assembly and the Council only upon their request. Therefore, it was decided to insert in function 12 the words "upon their request" after the words "the Council and the Assembly".

5. The delegation which at the last session had submitted a revised text of function 12 had also proposed at that session two additional functions (16 and 17) for the Finance Committee. These functions provide for the Finance Committee to make recommendations to the Council and the Assembly on the draft rules relating to the organization, management, appointment and dismissal of the staff of the Enterprise and the Authority respectively. At the consultations it was decided that those recommendations should be made by the Finance Committee only if so requested by the Assembly and the Council. Therefore, as in the case of function 12, it was agreed that the words "upon their request" should be inserted after the words "the Council and the Assembly" in the text of both new functions.

6. The next item considered at the consultations was article 7, paragraph 1, of the Relationship Agreement which was pending (LOS/PCN/WP.50/Rev.2). That article deals with the reciprocal representation of the United Nations and the

Authority in each other's organs. Having discussed the text of article 7, paragraph 1, the participants in the consultations agreed that since the question of the participation of observers in the work of various organs of the Authority was still pending, the text of article 7, paragraph 1, should be amended by making its text more general through the deletion of the reference to particular organs of the Authority. According to this understanding, the text of article 7, paragraph 1, as amended, reads as follows:

> "Representatives of the United Nations shall be entitled to attend, and to participate, without the right to vote, in the meetings of the organs of the Authority and their subsidiary organs, in accordance with their rules of procedure, if matters of interest to the United Nations are under consideration. Written statements submitted by the United Nations shall be distributed by the Secretariat of the Authority to its members, in accordance with the rules of procedure of the organs of the Authority and of their subsidiary organs."

7. As provided for in the programme of work, during the present session the Chairman also conducted consultations with regard to the issues raised in the working paper on the administrative arrangements, structure and financial implications of the International Seabed Authority (LOS/PCN/WP.51).

8. It was agreed that the statement of the Chairman on the subject, contained in paragraph 53 of the progress report of the Chairman of the Preparatory Commission on the Work of the Commission (LOS/PCN/L.103), reflected the general agreement on the principles that should guide the work of the Authority. It was understood that details of those general principles should be worked out at an appropriate time in the future and that at such time due consideration would be given to each of the principles.

9. The results of the above consultations were reported by the Chairman to the Plenary on the Authority and were approved by it at a meeting held on 17 August 1992.

III. IMPLEMENTATION OF RESOLUTION II

10. As had been agreed, the Chairman undertook consultations on the modalities for the implementation of the obligations of the registered pioneer investor, the Interoceanmetal Joint Organization (IOM). On 18 August 1992, the General Committee unanimously adopted the Understanding on the Fulfilment of Obligations by the Registered Pioneer Investor, the Interoceanmetal Joint Organization. The Understanding is contained in the annex to the present statement.

IV. THE TRAINING PANEL

11. At the present session the Training Panel held nine meetings during the first week to consider, inter alia, the revised training programmes of India and the Russian Federation, to select six candidates for the traineeships under the training programmes offered by France and Japan, and to examine, if available, both the training programme of the People's Republic of China and that offered by Germany. The report of the Training Panel is contained in document LOS/PCN/BUR/R.17.

12. The revised training programmes offered by India (LOS/PCN/TP/1992/CRP.8 and Corr.1) and the Russian Federation (LOS/PCN/TP/1992/CRP.11) and a draft note verbale (LOS/PCN/BUR/R.19) announcing the six traineeships under those programmes were approved by the Panel.

13. The Panel selected six candidates for the traineeships under the training programmes offered by France and Japan, i.e., two candidates from two African countries, one candidate from one country of the Latin American and the Caribbean region and three candidates from three Asian countries. In the absence of qualified candidates for the traineeship in naval engineering offered under the French training programme, it was decided to defer that traineeship and transfer it to one in mining geology. The names of the candidates selected by the Panel and recommended for designation by the Preparatory Commission in respect of the traineeships under the training programmes offered by France and Japan are contained in document LOS/PCN/BUR/R.18. The Panel was not able to resolve the question of whether nominees from countries which are now registered pioneer investors should be considered for the training programmes offered by other registered pioneer investors. It requested the General Committee to take a decision on this matter (LOS/PCN/BUR/R.17).

14. The representative of the People's Republic of China informed the Panel that his Government's training programme would be presented at the next session at Kingston. The representative of Germany informed the Panel that his Government's training programme, offering three or four traineeships, would also be presented at that time (ibidem).

15. On 20 August 1992, the General Committee considered the report of the third meeting of the Training Panel and took note of it. It approved the recommendation and designated the six candidates selected by the Panel for the traineeships under the training programmes offered by France and Japan. The General Committee also took note of the note verbale on the training programmes offered by India and the Russian Federation.

16. On the question of whether nationals from certifying States of registered pioneer investors should be selected for training programmes offered by other registered pioneer investors, the Chairman of the Preparatory Commission informed the General Committee that he would undertake consultations on the issue at the beginning of the next session at Kingston. The Training Panel will meet during the first week of the eleventh session at Kingston.

V. PROVISIONAL REPORTS

17. The Preparatory Commission will hold a two-week session at Kingston to consider the provisional reports of the special commissions and of the Informal Plenary.

18. At that meeting the Chairman will undertake consultations with all the parties involved as to the future work of the Preparatory Commission, including any interim arrangements.

VI. ELEVENTH SESSION OF THE PREPARATORY COMMISSION

19. The Chairman undertook consultations with the Chairmen of the regional groups on the dates of the eleventh session. It was decided to hold the eleventh session of the Preparatory Commission at Kingston from 22 March to 2 April 1993. It was also decided that the Training Panel will meet during the first week simultaneously with the meeting of the Preparatory Commission.

Annex

UNDERSTANDING ON THE FULFILMENT OF OBLIGATIONS BY THE REGISTERED PIONEER INVESTOR, THE INTEROCEANMETAL JOINT ORGANIZATION (IOM) AND ITS CERTIFYING STATES, THE REPUBLIC OF BULGARIA, THE REPUBLIC OF CUBA, THE CZECH AND SLOVAK FEDERAL REPUBLIC, THE REPUBLIC OF POLAND AND THE RUSSIAN FEDERATION

1. This understanding applies to the registered pioneer investor, the Interoceanmetal Joint Organization (IOM) and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation.

2. The pioneer investor shall provide training pursuant to paragraph 12 (a) (ii) of resolution II in conformity with the specific programme for training approved by the Preparatory Commission in accordance with the principles, policies, guidelines and procedures contained in documents LOS/PCN/SCN.2/L.6/Rev.1 and LOS/PCN/SCN.2/L.7, taking into account the report contained in document LOS/PCN/BUR/R.6. It is agreed that the cost of such training shall be borne by the registered pioneer investor and shall be free of cost to the Preparatory Commission. The precise number of trainees, the duration and the fields of training shall be agreed upon between the Preparatory Commission and the registered pioneer investor according to its capabilities. It is further agreed that the first group of trainees shall consist of no less than four individuals.

3. In accordance with paragraph 12 (a) (iii) of resolution II, the registered pioneer investor undertakes to perform the obligations prescribed in the United Nations Convention on the Law of the Sea relating to the transfer of technology, and further agrees that training in the use of all available technology shall constitute a substantial component of the training programme referred to in paragraph 2.

4. The periodic expenditures for exploration to be incurred in accordance with paragraph 7 (c) of resolution II by the registered pioneer investor in respect of the development of the pioneer area shall be determined by the Preparatory Commission in consultation with and with the cooperation of the registered pioneer investor within 12 months of the adoption of this understanding. Such expenditures shall be reviewed by the Preparatory Commission from time to time in consultation with and with the cooperation of the registered pioneer investor.

5. The certifying States agree to provide, in accordance with paragraph 12 (b) (ii) of resolution II, periodic reports to the Commission on the pioneer activities as defined in paragraph 1 (b) of resolution II, carried out by them, by their entities or natural or juridical persons in their pioneer area. Such reports shall be provided annually.

6. The Commission recognizes that the obligation of the certifying States under paragraph 12 (b) (i) of resolution II is to be implemented upon the entry into force for those States of the United Nations Convention on the Law of the Sea.

7. The registered pioneer investor, the Interoceanmetal Joint Organization (IOM), will undertake, if so requested by the Preparatory Commission, a programme of exploration in accordance with the provisions of paragraph 12 (a) (i) of resolution II, of one mine site for the Enterprise in the area designated as the reserved area for the conduct of activities by the Authority.

8. The registered pioneer investor, Interoceanmetal Joint Organization (IOM), on the basis of the available data collected by it in the area reserved for the Authority, shall provide free of cost to the Preparatory Commission:

Computerized database disks for samples, including:

(i) The establishment of comprehensive computerized database disks for samples stations;

(ii) Data on station number, coordinates, depth, abundance, metal content, device and information on the source of the data; allowing the raw data to be statistically manipulated and presented on various types of maps and graphs.

9. The obligation of the registered pioneer investor, Interoceanmetal Joint Organization (IOM), under the provisions of paragraph 7 (b) of resolution II shall be waived as of the date of the registration.

10. Within three months of the date of deposit of the sixtieth instrument of ratification or accession, the Group of Technical Experts established in accordance with paragraph 6 of document LOS/PCN/L.41/Rev.1, annex, shall review the state of the deep seabed mining and make an assessment of the time when commercial production may be expected to commence. If, as a result of the review and the assessment, the Group of Technical Experts concludes that commercial production will not take place for an extended period of time, the Preparatory Commission shall recommend to the Authority that the annual fixed fee payable under annex III, article 13, paragraph 3, be waived for a relevant period.

11. Taking into account paragraph 19 (e) of the statement on the implementation of resolution II (LOS/PCN//L.41/Rev.1, annex), paragraph 17 of LOS/PCN/L.87, annex, paragraph 11 of LOS/PCN/L.102, annex, and the present understanding, as well as the relevant characteristics and merits of each application, the Preparatory Commission or the Authority shall enter into arrangements similar to those contained in the above understandings with any other registered pioneer investor or future applicant.

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31 March 1993

ORIGINAL: ENGLISH

PREPARATORY COMMISSION FOR THE
INTERNATIONAL SEABED AUTHORITY
AND FOR THE INTERNATIONAL
TRIBUNAL FOR THE LAW OF THE SEA
Eleventh session
Kingston, Jamaica
22 March-2 April 1993

STATEMENT TO THE PLENARY BY THE CHAIRMAN OF SPECIAL COMMISSION 4 ON THE PROGRESS OF WORK IN THAT COMMISSION

1. At the eleventh session of the Preparatory Commission, the Special Commission had before it the following documents:

(a) LOS/PCN/SCN.4/WP.14, draft Outline for Report of the Preparatory Commission Containing Recommendations Regarding Practical Arrangements for the Establishment of the International Tribunal for the Law of the Sea;

(b) LOS/PCN/SCN.4/WP.15, draft Report of the Preparatory Commission under paragraph 10 of Resolution I containing recommendations regarding Practical Arrangements for the establishment of the International Tribunal for the Law of the Sea;

(c) LOS/PCN/SCN.4/WP.15/Add.2, (Final draft Headquarters Agreement between the International Tribunal for the Law of the Sea and the Federal Republic of Germany); and

(d) LOS/PCN/SCN.4/WP.15/Add.3, (Final draft Protocol on the Privileges and Immunities of the International Tribunal for the Law of the Sea;

2. The Chairman of the Special Commission, Mr. Anton Bouteiko, had communicated a request that Mr. Theodore Halkiopoulos, (Greece) Vice Chairman of the Special Commission should continue to act in his place and proceed with the programme of work taking any necessary decisions on his behalf.

3. The Special Commission held a total of five meetings, starting with the 160th meeting. The Special Commission devoted its efforts to the consideration of the draft Report (LOS/PCN/SCN.4/WP.15). The Contact Group of the Group of 77 on Special Commission 4 matters was allocated some time from the meetings scheduled for Special Commission 4 for purposes of coordination.

4. The Special Commission completed consideration of the draft report contained in document LOS/PCN/SCN.4/WP.15.

5. The Commission began its consideration with the title. It was agreed that the role of the Special Commission in producing the report should be outlined. It was also agreed to reproduce the whole title of the Report as it is contained in paragraph 10 of Resolution I. It was noted that the report was prepared and presented by the Special Commission in response to the direction of the Preparatory Commission calling for a comprehensive report detailing the work of the Special Commission including the texts prepared by it. It was also considered necessary to reflect the provisional nature of the report. Consequently, while maintaining the existing title with some elaboration, a new title "Provisional Report of Special Commission 4" is to be inserted before it.

6. It was generally agreed that the Introductory Note needed elaboration regarding the role of the Special Commission. It was also considered necessary to list and record the status of the pending issues and to reflect further, the provisional nature of the report.

7. In the further consideration of the report, the Special Commission agreed to modifications with respect to the items set out in the Annex hereto.

8. When considering Annex 1 of LOS/PCN/SCN4/WP.15, delegations were informed that as the Chairman of the Preparatory Commission had stated, it would not be possible to discuss the Addenda in view of the limited time. However, they would be in a position to give their comments in writing upon receiving the listed documents. Comments would be attached to the Report for final submission to the meeting of States Parties.

10. As regards Annex II of LOS/PCN/SCN4/WP.15, some delegations suggested the inclusion of certain additional documents.

11. The Secretariat was requested to effect the agreed changes and to provide the delegations as soon as possible with all documents listed in Annex I of the Report.

12. The Acting Chairman expressed his gratitude to delegations for their active co-operation and their constructive approach to the discussions. He also expressed his appreciation to the members of the Bureau, for their guidance and advice. The Chairman also extended his and the Commission's gratitude to the Secretary of the Special Commission, Mr. Gritakumar Chitty and to Ms Alice Hicuburundi as well as to the other members of the Secretariat for the valuable and competent services they consistently rendered to the Commission, especially in preparing and submitting the various working papers and texts.

ANNEX

The modifications to the Draft Report (LOS/PCN/SCN4/WP.15), as approved by Special Commission 4, are listed below under the relevant part, chapter, section etc., of the Draft Report.

1. **TITLE**

(a) Insert a new title to the document (in upper case) to read: "PROVISIONAL REPORT OF SPECIAL COMMISSION 4"

(b) Maintain the existing title in parentheses and insert the full text of paragraph 10 of Resolution I, to read:

"(DRAFT REPORT OF THE PREPARATORY COMMISSION UNDER PARAGRAPH 10 OF RESOLUTION I CONTAINING RECOMMENDATIONS FOR SUBMISSION TO THE MEETING OF STATES PARTIES TO BE CONVENED IN ACCORDANCE WITH ANNEX VI, ARTICLE 4, OF THE CONVENTION REGARDING PRACTICAL ARRANGEMENTS FOR THE ESTABLISHMENT OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA)"

2. **INTRODUCTORY NOTE**

Revise the Introductory Note:
(a) to provide a list of pending issues;
(b) to reflect the situation concerning pending issues;
(c) to note that some issues were not successfully concluded and that they should be resolved at an appropriate time;
(d) to reflect the provisional nature of the report by the use of language similar to the opening paragraph in the report of the Plenary (LOS/PCN/WP.52);
(e) to indicate clearly that the report is the product of the work of Special Commission 4; and
(f) to clearly state that the report is the result of the work of Special Commission 4 rather than that of the Preparatory Commission.

3. **CHAPTER I JUDICIAL PROCEDURE**
Section 1. Recommendations Concerning the Draft Rules of the Tribunal

Second paragraph, (the first recommendation), is to be modified as follows:

(a) first line to read: "the final draft Rules of the Tribunal formulated by the Commission and" ;

(b) last line: For "adoption" substitute a less definitive word;

Section 2. Composition of the Tribunal and its Chambers

(c) First paragraph, in first line, before "geographical distribution", insert "equitable";

Section 3. Official Working Languages

(d) At the end of the paragraph, insert a new sentence to read: "No agreement was reached among delegations regarding the official working languages of the Tribunal."

4. CHAPTER II. INTERNATIONAL AGREEMENTS
Section 1. Recommendations Concerning the Draft Headquarters Agreement Between the International Tribunal for the Law of the Sea and the Federal Republic of Germany

(a) At the end of final paragraph of the Section, insert reference to footnote 38 of the Final Act of the Third United Nations Conference on the Law of the Sea

Section 2. Recommendations Concerning the Draft Protocol on the Privileges and Immunities of the Tribunal

(b) First paragraph on page 11, (the first recommendation) is reformulated to read:
"THE PREPARATORY COMMISSION recommends that:
the final draft protocol on the privileges and immunities of the International Tribunal for the Law of the Sea formulated by the Commission and its Special Commission 4, addendum 3 hereto, should provide the basis for negotiating and entering into such a protocol".

(c) Fourth paragraph on page 11, last line, delete "approved" and substitute "formulated".

(d) Delete the fifth paragraph on page 11

Section 3. Use of the United Nations Laissez-passer by the Tribunal

(e) Delete the last sentence of the paragraph. Move Section 3 to Chapter III, at the end of Section 1. thereof. Consequently re-number the Sections of Chapter III.

5. CHAPTER III. RELATIONSHIP ARRANGEMENTS
Section 1. Recommendations Concerning Relationship Arrangements Between the United Nations and the International Tribunal for the Law of the Sea

(a) Modify first paragraph, replacing the first 2 lines, with the following:

" In order to enable the International Tribunal and the United Nations to have and develop a relationship of effective cooperation thereby facilitating the objectives of the Tribunal and the United Nations, it is..."

(b) Modify the second paragraph, by inserting the full title of the Relationship Agreement.

(c) Modify the fourth paragraph, seventh line, by inserting "was" after "Sea".

Section 2. **Relationship Arrangement Between the International Tribunal for the Law of the Sea and the International Seabed Authority**

(d) Modify the second paragraph, by deleting the final clause which reads: "as a basis for the deliberations of the Meeting of States Parties"

Section 3. **Supplementary Arrangements Between the International Tribunal for the Law of the Sea and the International Court of Justice**

(e) Modify the first paragraph, the fourth line, after the words "would not" insert the words "be appropriate for it"; end the sentence after the words "relationship arrangements." in the fifth line.

6. **CHAPTER IV. ADMINISTRATIVE ARRANGEMENTS**

Section 1. **Recommendations Concerning Administrative Arrangements, Structure and Financial Implications of the International Tribunal for the Law of the Sea**

and

Recommendations Concerning the Scheme for the Initial Phasing-in of the Establishment of the International Tribunal for the Law of the Sea

(a) Third paragraph, eleventh line before the words "official working" insert "one or six".

(b) Fourth paragraph, first line delete the words "that the Secretariat would" and substitute the word "to";
After the word "formulate" insert the words " for the Meeting of States Parties".

(c) Fifth paragraph, fourth line, delete the word "interested"; At the end of the paragraph and insert a new sentence, to read: "No agreement was reached among delegations regarding the official working languages of the Tribunal."

(d) Fifth paragraph, last line, insert a reference to document SCN.4/WP.13/Corr.1 and the additional Co-sponsors of the proposal.

Section 2. **Recommendations Concerning the Draft Financial Rules and Staff Regulations**

(e) In Section title, delete the words "Recommendations concerning the"

Section 3. **Recommendations Concerning the Initial Financing and Budget of the International Tribunal for the Law of the Sea**

(f) In Section title, delete the words "Recommendations concerning the"

(g) In second paragraph, first line, substitute the word "proposals" for the word "recommendations".

(h) In second paragraph, third line, delete the words "to provide a basis".

(i) In third paragraph, fourth and fifth lines, delete the words "that the Secretariat would" and substitute the word "to"; and substitute "proposals" for the word "recommendations".

7. CHAPTER V. THE PERMANENT HEADQUARTERS OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Section 3. Recommendations Concerning the Requirements and Facilities Necessary to Supplement those Provided by the Host Country

(a) In the third paragraph, the enumeration of furniture and equipment intended to be provided by the Host Country is to be moved to the end of Chapter V, Section 2. Consequential cross references would be made.

8. ANNEX I LIST OF ADDENDA

The description of the listed items is to be completed.

9. ANNEX II LIST OF ATTACHMENTS
DOCUMENTS OF SPECIAL COMMISSION 4

The additional documentation of the Eleventh session and the further documents identified as being of relevance to the Special Commission are to be included as attachments.

10. GENERAL

The secretariat would harmonize the language versions with the original as necessary and wherever referred to in the deliberations.

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Eleventh session
Kingston, Jamaica
22 March-2 April 1993

STATEMENT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During this session, the Plenary dealt with the following matters:

(a) Organization of work;

(b) Consideration of the draft provisional final report by the informal plenary;

(c) Implementation of resolution II;

(d) The Training Panel;

(e) Future work of the Preparatory Commission;

(f) Consideration of the provisional final report of the Preparatory Commission.

I. ORGANIZATION OF WORK

2. On 22 March 1993 the Plenary, on the recommendation of the General Committee, adopted a programme of work for this session of the Commission which enabled all the Special Commissions and the Plenary on the Authority to meet. As in the past the programme was adopted on the understanding that changes would be made as circumstances required. In accordance with the decision of the Preparatory Commission, the Training Panel met during the first week of the this session of the Preparatory Commission.

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II. CONSIDERATION OF THE DRAFT PROVISIONAL FINAL REPORT (LOS/PCN/WP.52) BY THE INFORMAL PLENARY

3. At the eleventh session of the Preparatory Commission, the Informal Plenary held four meetings all of which were devoted to the consideration of the Draft Provisional Final Report of the informal Plenary. This report contained three addenda which were circulated in documents LOS/PCN/WP.52 and LOS/PCN/WP.52/Add.1-3. Documents LOS/PCN/WP.52/Add.1 and Add.2 contain documents relevant to the implementation of resolution II of the Third United Nations Conference on the Law of the Sea. Document LOS/PCN/WP.52/Add.3 contains the draft rules of procedure for the organs of the Authority; the final draft agreements concerning the relationship of the Authority with the United Nations and with the Government of Jamaica regarding the Headquarters of the Authority, the final draft Protocol on the Privileges and Immunities of the Authority and the document on the Administrative arrangements, structure and financial implications of the Authority.

4. The Informal Plenary decided that the text of its report should be divided into three parts: Introduction, Implementation of resolution II and Plenary on the Authority. The Informal Plenary proceeded to examine the report, paragraph by paragraph, and decided to make the following changes.

(i) The Introduction:

5. It was agreed that the first part of the report, entitled "Introduction" should include paragraphs 1 to 8 of the Draft Provisional Final Report. Paragraphs 58 and 59 of the present text of the report will be deleted. However, it was understood that some of the references contained in these two paragraphs, which were not mentioned in the eight introductory paragraphs, would be incorporated into the Introduction. In this regard, reference, in particular, was made to the provision of paragraph 58 stating that the issues related to the implementation of resolution II had been considered by the Preparatory Commission as a matter of high priority.

Paragraph 2, lines 1 and 2 should read:

> "2. The Third United Nations Conference on the Law of the Sea established by resolution I the Preparatory Commission for the International Seabed Authority and for the ..."

Paragraph 8 bis:

> Add the following:
>
> "The Draft Principles, Policies, Guidelines and Procedures for a Preparatory Commission Training Programme provided that the Training Panel will: (i) evaluate performance reports in the event that designated persons are selected for further training; (ii) keep the progamme under review particularly with respect to established priorities, scheduling and financial implications, taking into account also the experience gained by both registered pioneer investors and trainees; and submit an annual progress report to the Preparatory Commission on the training provided, including information on all expenditure made under the programme."

Paragraph 8 ter:

On 2 September 1985 the Preparatory Commission adopted a declaration on the issue of unilateral legislation stating that:

"a) The only regime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea.

"b) Any claim, agreement or action regarding the Area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized." (LOS/PCN/72)

(ii) Implementation of resolution II of the Third United Nations Conference on the Law of the Sea:

6. The following are the amendments made to this section:

Paragraph 9, line 5:

After expertise insert the following sentence:

"It was also recognized that there was a need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with States and other entities."

Paragraph 16, line 11:

For self-selection of areas, read self-selection of the pioneer areas.

Paragraph 17, lines 3 and 4 should read:

"... the Group of 10, representing the Group of 77, and the Group of 11, also known as the Friends of the Convention, as well as China."

Paragraph 22 bis should read:

"The procedures and mechanisms outlined in the understanding were devised in order to overcome practical difficulties in the implementation of resolution II and to facilitate the early registration of the first group of applicants as soon as possible."

Paragraph 22 ter should read:

"The procedures and mechanisms were essentially designed for the registration of the first group of applicants as pioneer investors under resolution II and constituted an integrated package to be implemented as a whole. They shall be respected by all concerned."

Paragraph 25

The first sentence of paragraph 25 will become the second sentence of paragraph 24.

Paragraph 28

At the end of this paragraph add the following:

"The General Committee also designated a part of the application areas to be reserved for the conduct of activities by the Authority in the Area through the Enterprise or in association with developing States."

Paragraph 33

At the end of the paragraph add

"... and shall be free of costs to the Preparatory Commission."

Paragraph 40 bis should read:

"Each registered pioneer investor participating in the activities under paragraph 7 of the understanding shall submit a comprehensive annual report to the Preparatory Commission on the type and extent of activities undertaken by it and details of expenditures incurred during that year, as well as a list of data and information gathered as a result of these activities."

Paragraph 52 bis should read:

"The registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA) agreed to undertake a programme of exploration, in accordance with the provisions of paragraph 12 (a) (i) of resolution II, of one mine site for the Enterprise in the area designated as the reserved area for the conduct of activities by the Authority."

Paragraph 57 should read:

"In more general terms as far as resolution II is concerned, the task of the Preparatory Commission is to continue its implementation, including the monitoring of the obligations of the registered pioneer investor IFREMER/AFERNOD and its certifying State, France; of the registered pioneer investor DORD and its certifying State, Japan; of the registered pioneer investor Yuzhmorgeologiya and its certifying State, the Russian Federation; the registered pioneer investor, India; the registered pioneer investor COMRA and its certifying State, the People's Republic of China; and of the registered pioneer investor IOM and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic *, the Republic of Poland

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* On 25 November 1992, the Federal Assembly of the Czech and Slovak Federal Republic adopted Constitutional Law No. 542 which terminated the existence of the Czech and Slovak Federal Republic; the Law came into force on 31 December 1992. The legal successors to the Czech and Slovak Federal Republic are two sovereign States: the Czech Republic and Slovakia. The Czech Republic and Slovakia were both admitted to membership in the United Nations on 19 January 1993.

and the Russian Federation. These obligations are respectively contained in the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the understanding on the fulfilment of obligations by the registered pioneer investor COMRA, and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex), and the understanding on the fulfilment of obligations by the registered pioneer investor IOM and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation (LOS/PCN/L.108, annex)."

(iii) The Plenary on the Authority

7. The Informal Plenary agreed on several drafting changes to be introduced into this part of the report.

8. It was agreed that the following new paragraphs would be added to the section of the report relating to the consideration of the hard-core issues by the Preparatory Commission:

"With regard to elections to the organs of the Authority the main differences of views may be summarized as follows:

(a) Many delegations expressed the view that elections to the organs of the Authority should be treated as a matter of procedure requiring a simple majority consistent with the practice in the United Nations system and other international organizations; that the Convention was careful to provide the categories to be classified as substance and elections were not included in these categories. In any event the Convention provided that if a question arises as to whether a matter was a matter of substance or procedure the question would be treated as one of substance unless otherwise decided by the majority required for decision of election.

Other delegations contended that elections were a matter of substance and should be decided by a two-thirds majority. Some delegations maintained that certain positions, such as the President of the Council were of such importance that it was necessary to demonstrate that these office holders were supported not merely by a simple majority.

(b) Another matter discussed centred around elections to the Council.

Some delegations proposed that the elections should ensure that the eight largest contributors to the Administrative Budget of the Authority were elected to the Council.

Many delegations argued that such a proposal would be inconsistent with the provisions of the Convention which struck a fine balance between representation for special interests and equitable geographical representation.

(c) Governing Board of the Enterprise

A similar proposal was made in respect of the Governing Board of the Enterprise by providing that due regard should be paid to equitable geographical distribution as well as expertise in financial fields particularly those relevant to deep seabed mining in such a way that eight of the members of the Governing Board shall be elected, from among candidates proposed by the eight States Parties which account for the largest proportions of the sums initially made available for payment or guarantee to the Enterprise.

Many delegations were opposed to this proposal contending that the Enterprise is an embodiment of the common heritage of mankind and that the proposal would not only be inconsistent with the Convention but give a disproportionate representation to some countries."

9. In connection with the consideration of the hard-core issues the Informal Plenary also decided that at the end of section A of part III of the report ("Preparation of draft rules of procedure for the organs of the Authority") the following three new paragraphs should be added:

"125 bis

In the course of the consultations held during the sessions of the Preparatory Commission on the hard-core issues, different views were espoused by delegations. These are to be found in the different Statements of the Chairman of the Preparatory Commission on the work of the sessions during which they were discussed.

125 ter

It was felt that, notwithstanding the exhaustive discussions held on the hard-core issues, no solutions could be reached on the these issues at this stage, until the practical difficulties of Part XI were to be addressed.

125 quater

The Chairman of the Preparation Commission summed up the discussion on these hard-core issues by stating that further consideration would be given to them at an appropriate time. An exhaustive list of these issues is annexed to the present report as pending issues."

10. It was pointed out during the discussion of paragraph 69 of the Draft Provisional Final Report that the present text of this paragraph did not adequately reflect the outcome of the consideration of a proposal introduced by EEC concerning participation in decision-making of an international organization. Therefore, the Informal Plenary decided that the present text of this paragraph should be replaced by the following text:

"The proposal mentioned in the preceding paragraph was extensively discussed. No solution was reached on it. It is recommended that further consideration be given to it by the Assembly of the Authority at an appropriate time."

11. In connection with the consideration of paragraphs 63 and 69 of the report, the Informal Plenary also agreed to delete the asterisk in rule 68 ("Voting rights") of the Final Draft Rules of Procedure of the Assembly of the Authority.

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12. The Informal Plenary further agreed to introduce the following changes in the text of this part of the report:

(a) At the end of paragraph 62 "annex X to the present report" should be replaced by "annex to the present report";

(b) In paragraph 65, line 1 should read "With regard to rule 1 on the regular sessions of the Assembly, it was approved on the understanding that ...";

(c) In paragraph 76 a reference to the Finance Committee should be added;

(d) In paragraphs 63, 72, 78, 85, 114, 127, 132, 136 and 140 references to annexes should be replaced by references to the texts of the respective documents contained in Addendum 3 to the report (LOS/PCN/WP.52/Add.3).

III. THE IMPLEMENTATION OF RESOLUTION II

13. In accordance with paragraph 5 of the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the certifying State, France on behalf of IFREMER/AFERNOD), India, Japan (on behalf of Deep Ocean Resources Development Co., Ltd. (DORD)) and the Russian Federation (on behalf of Yuzhmorgeologiya) submitted periodic reports to the Preparatory Commission. These reports are contained respectively in documents LOS/PCN/BUR/R.22, LOS/PCN/BUR/R.24 and LOS/PCN/BUR/R.25. In accordance with paragraph 5 of the understanding on the fulfilment of obligations by the registered pioneer investor, COMRA and its certifying State (LOS/PCN/L.102, annex), the People's Republic of China submitted a periodic report on the activities of COMRA (LOS/PCN/BUR.R.20). It was felt that in the future such reports should contain as much detailed information as possible, including information on periodic expenditures and the progress made in pioneer activities. The General Committee, having considered the reports of the certifying States, took note of them.

IV. THE TRAINING PANEL

14. The General Committee considered the report of the Training Panel. The Training Panel held eight meetings during the first week of the current session to, inter alia, select six candidates for the traineeships under the training programmes offered by India and the Russian Federation, consider the training programme of China and that of the Interoceanmetal Joint Organization and its certifying States, and to consider the training programme submitted by Germany.

15. The training programmes of China and the Interoceanmetal Joint Organization and its certifying States were approved by the Panel following the introduction of certain modifications. Those revised programmes are contained in documents LOS/PCN/TP/1993/CRP.13/Rev.1 and LOS/PCN/TP/CRP.12/Rev.1, respectively. The draft note verbale (LOS/PCN/BUR/R.27) announcing those programmes was also approved by the Panel.

16. The Panel selected five candidates for the traineeships under the training programmes offered by India and the Russian Federation, i.e., two candidates from two African countries, one candidate from one country from the Latin American and the Caribbean region, and two candidates from one Asian

country. The names of the candidates selected and recommended for designation by the Preparatory Commission in respect of the traineeships under the training programmes of India and the Russian Federation are contained in document LOS/PCN/BUR/R.26. In the absence of a qualified candidate in chemical engineering offered under the training programme of India, it was decided to defer that traineeship and to announce it in a new note verbale. The draft note verbale which was approved by the Panel is contained in document LOS/PCN/BUR/R.28.

17. With regard to the training programme submitted by Germany (LOS/PCN/TP/1993/CRP.15), the Panel was of the view that further details were required on the type of training to be offered and the disciplines involved. It requested the programme to be revised to conform to the format of the programmes which had already been adopted.

18. The Panel took note of a report submitted by France on the implementation of the French training programme (LOS/PCN/TP/1993/CRP.16).

19. On 31 March 1993, the General Committee considered the report of the fourth meeting of the Training Panel (LOS/PCN/BUR/R.29) and took note of it. It approved the recommendation and designated five candidates selected by the Panel for the traineeships under the training programmes offered by India and the Russian Federation. The General Committee also took note of the note verbale on the traineeships offered under the training programmes of China and the Interoceanmetal Joint Organization and its certifying States, and the note verbale on the traineeship in chemical engineering offered under the training programme of India.

V. FUTURE WORK OF THE PREPARATORY COMMISSION

20. The Preparatory Commission decided, in the light of the recommendation of the General Committee, on the following future programme of its work:

(a) not to hold any more meetings in the course of this year;

(b) to make provision every year for the United Nations servicing of a two-week annual session of the Preparatory Commission, until the entry into force of the Convention;

(c) the need for the effective holding of the annual session of the Preparatory Commission will be decided by the Chairman of the Preparatory Commission in consultation with the Chairmen of the Special Commissions, the Chairmen of Regional Groups and interest groups. The Chairman of the Preparatory Commission will also decide, on the basis of such consultations, the precise date for such a meeting;

(d) the General Committee, acting on behalf of the Preparatory Commission as its executive organ for the implementation of resolution II, will meet for two or three days annually to consider matters related to the implementation of resolution II and to continue the monitoring of the implementation of the obligations of the registered pioneer investors.

21. As far as possible efforts should be made to have the meetings of the General Committee and of the Training Panel coincide with the annual meeting of the Preparatory Commission.

VI. CONSIDERATION OF THE DRAFT PROVISIONAL FINAL REPORTS OF THE PREPARATORY COMMISSION

22. The Plenary of the Preparatory Commission received the statements of the Chairmen of the Special Commissions on the consideration of the respective draft provisional final reports that are relevant to their mandate. The Chairman of the Preparatory Commission introduced his statement on the work of the informal plenary on its draft provisional final report.

23. Having thus considered these statements, the Preparatory Commission decided to take note of them.

24. The Preparatory Commission decided to take note of the draft provisional final reports, as amended.

25. A revised version of these reports incorporating the amendments made thereon during this session will be prepared by the Secretariat and will be issued, at the appropriate time, as a consolidated provisional final report of the Preparatory Commission.

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Eleventh session
Kingston, Jamaica
22 March-2 April 1993

STATEMENT OF THE CHAIRMAN OF THE PREPARATORY COMMISSION

Corrigendum

13 bis should read:

"The General Committee considered the letter dated 25 March 1993 from the Coordinator of the Group of registered pioneer investors on behalf of France, Japan and the Russian Federation addressed to the Chairman of the Preparatory Commission (LOS/PCN/128). The General Committee noted that the principle of non-discrimination should be taken into account in the implementation of the obligations of the registered pioneer investors, as reflected in the relevant documents of the Preparatory Commission. The Chairman noted that further consideration would be given to this matter by the General Committee at its next meeting."

19 bis should read:

"The Chairman will consult by telephone or facsimile with the delegations concerned in order to enable the Training Panel to meet at an appropriate time".

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(a) Organization of work;

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(c) Implementation of resolution II;

(d) The Training Panel;

(e) Future work of the Preparatory Commission;

(f) Consideration of the draft provisional final reports of the Preparatory Commission.

I. ORGANIZATION OF WORK

2. On 22 March 1993 the Plenary, on the recommendation of the General Committee, adopted a programme of work for the current session of the Commission which enabled all the Special Commissions and the Plenary on the Authority to meet. As in the past the programme was adopted on the understanding that changes would be made as circumstances required. In accordance with the decision of the Preparatory Commission, the Training Panel met during the first week of the current session of the Preparatory Commission.

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II. CONSIDERATION OF THE DRAFT PROVISIONAL FINAL REPORT (LOS/PCN/WP.52) BY THE INFORMAL PLENARY

3. At the eleventh session of the Preparatory Commission, the Informal Plenary held four meetings, all of which were devoted to the consideration of the draft provisional final report of the Plenary. That report contained three addenda which were circulated in documents LOS/PCN/WP.52 and LOS/PCN/WP.52/Add.1-3. Documents LOS/PCN/WP.52/Add.1 and Add.2 contain documents relevant to the implementation of resolution II of the Third United Nations Conference on the Law of the Sea. Document LOS/PCN/WP.52/Add.3 contains the draft rules of procedure for the organs of the Authority, the final draft agreements concerning the relationship of the Authority with the United Nations and with the Government of Jamaica regarding the Headquarters of the Authority, the final draft Protocol on the Privileges and Immunities of the Authority and the document on the administrative arrangements, structure and financial implications of the Authority.

4. The Informal Plenary decided that the text of its report should be divided into three parts: Introduction, Implementation of resolution II and Plenary on the Authority. The Informal Plenary proceeded to examine the report, paragraph by paragraph, and decided to make the following changes.

(i) The Introduction:

5. It was agreed that the first part of the report, entitled "Introduction", should include paragraphs 1 to 8 of the draft provisional final report. Paragraphs 58 and 59 of the present text of the report will be deleted. However, it was understood that some of the references contained in those two paragraphs, which were not mentioned in the eight introductory paragraphs, would be incorporated into the Introduction. In this regard, reference, in particular, was made to the provision of paragraph 58 stating that the issues related to the implementation of resolution II had been considered by the Preparatory Commission as a matter of high priority.

Paragraph 2, lines 1 and 2, should read:

"2. The Third United Nations Conference on the Law of the Sea established by resolution I the Preparatory Commission for the International Seabed Authority and for the ..."

Paragraph 8 <u>bis</u>:

<u>Add</u> the following:

"The Draft Principles, Policies, Guidelines and Procedures for a Preparatory Commission Training Programme provided that the Training Panel will: (i) evaluate performance reports in the event that designated persons are selected for further training; (ii) keep the programme under review particularly with respect to established priorities, scheduling and financial implications, taking into account also the experience gained by both registered pioneer investors and trainees; and submit an annual

progress report to the Preparatory Commission on the training provided, including information on all expenditure made under the programme."

Paragraph 8 ter:

On 2 September 1985 the Preparatory Commission adopted a declaration on the issue of unilateral legislation stating that:

"(a) The only regime for exploration and exploitation of the Area and its resources is that established by the United Nations Convention on the Law of the Sea and related resolutions adopted by the Third United Nations Conference on the Law of the Sea.

"(b) Any claim, agreement or action regarding the Area and its resources undertaken outside the Preparatory Commission which is incompatible with the United Nations Convention on the Law of the Sea and its related resolutions shall not be recognized." (LOS/PCN/72)

(ii) Implementation of resolution II of the Third United Nations Conference on the Law of the Sea:

6. The following are the amendments made to this section:

Paragraph 9, line 5:

After expertise insert the following sentence:

"It was also recognized that there was a need to ensure that the Enterprise will be provided with the funds, technology and expertise necessary to enable it to keep pace with States and other entities."

Paragraph 16, line 11:

For self-selection of areas, read self-selection of the pioneer areas.

Paragraph 17, lines 3 and 4 should read:

"... the Group of 10, representing the Group of 77, and the Group of 11, also known as the Friends of the Convention, as well as China."

Insert a new paragraph 22 bis, reading as follows:

"The procedures and mechanisms outlined in the understanding were devised in order to overcome practical difficulties in the implementation of resolution II and to facilitate the early registration of the first group of applicants as soon as possible."

Insert a new paragraph 22 ter, reading as follows:

"The procedures and mechanisms were essentially designed for the registration of the first group of applicants as pioneer investors under

resolution II and constituted an integrated package to be implemented as a whole. They shall be respected by all concerned."

Paragraph 25

The first sentence of paragraph 25 will become the second sentence of paragraph 24.

Paragraph 28

At the end of this paragraph add the following:

"The General Committee also designated a part of the application areas to be reserved for the conduct of activities by the Authority in the Area through the Enterprise or in association with developing States."

Paragraph 33

At the end of the paragraph add

"... and shall be free of costs to the Preparatory Commission."

Insert a new paragraph 40 bis, reading as follows:

"Each registered pioneer investor participating in the activities under paragraph 7 of the understanding shall submit a comprehensive annual report to the Preparatory Commission on the type and extent of activities undertaken by it and details of expenditures incurred during that year, as well as a list of data and information gathered as a result of these activities."

Insert a new paragraph 52 bis, reading as follows:

"The registered pioneer investor, the China Ocean Mineral Resources Research and Development Association (COMRA), agreed to undertake a programme of exploration, in accordance with the provisions of paragraph 12 (a) (i) of resolution II, of one mine site for the Enterprise in the area designated as the reserved area for the conduct of activities by the Authority."

Paragraph 57 should read:

"In more general terms as far as resolution II is concerned, the task of the Preparatory Commission is to continue its implementation, including the monitoring of the obligations of the registered pioneer investor IFREMER/AFERNOD and its certifying State, France; of the registered pioneer investor DORD and its certifying State, Japan; of the registered pioneer investor Yuzhmorgeologiya and its certifying State, the Russian Federation; the registered pioneer investor, India; the registered pioneer investor COMRA and its certifying State, the People's Republic of China; and of the registered pioneer investor IOM and its certifying States, the Republic of

Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic,* the Republic of Poland and the Russian Federation. These obligations are respectively contained in the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), the understanding on the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the understanding on the fulfilment of obligations by the registered pioneer investor COMRA and its certifying State, the People's Republic of China (LOS/PCN/L.102, annex), and the understanding on the fulfilment of obligations by the registered pioneer investor IOM and its certifying States, the Republic of Bulgaria, the Republic of Cuba, the Czech and Slovak Federal Republic, the Republic of Poland and the Russian Federation (LOS/PCN/L.108, annex)."

(iii) The Plenary on the Authority

7. The Informal Plenary agreed on several drafting changes to be introduced into this part of the report.

8. It was agreed that the following new paragraphs should be inserted after paragraph 124:

"With regard to elections to the organs of the Authority the main differences of views may be summarised as follows:

"(a) Many delegations expressed the view that elections to the organs of the Authority should be treated as a matter of procedure requiring a simple majority consistent with the practice in the United Nations system and other international organizations; that the Convention was careful to provide the categories to be classified as substance and elections were not included in these categories. In any event the Convention provided that if a question arises as to whether a matter was a matter of substance or procedure the question would be treated as one of substance unless otherwise decided by the majority required for decision of election.

Other delegations contended that elections were a matter of substance and should be decided by a two-thirds majority. Some delegations maintained that certain positions, such as the President of the Council were of such importance that it was necessary to demonstrate that these office holders were supported not merely by a simple majority.

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* On 25 November 1992, the Federal Assembly of the Czech and Slovak Federal Republic adopted Constitutional Law No. 542 which terminated the existence of the Czech and Slovak Federal Republic; the Law came into force on 31 December 1992. The legal successors to the Czech and Slovak Federal Republic are two sovereign States: the Czech Republic and Slovakia. The Czech Republic and Slovakia were both admitted to membership in the United Nations on 19 January 1993.

"(b) Another matter discussed centred around elections to the Council.

Some delegations proposed that the elections should ensure that the eight largest contributors to the Administrative Budget of the Authority were elected to the Council.

Many delegations argued that such a proposal would be inconsistent with the provisions of the Convention which struck a fine balance between representation for special interests and equitable geographical representation.

"(c) Governing Board of the Enterprise

A similar proposal was made in respect of the Governing Board of the Enterprise by providing that due regard should be paid to equitable geographical distribution as well as expertise in financial fields, particularly those relevant to deep seabed mining, in such a way that eight of the members of the Governing Board shall be elected from among candidates proposed by the eight States Parties which account for the largest proportions of the sums initially made available for payment or guarantee to the Enterprise.

Many delegations were opposed to this proposal, contending that the Enterprise is an embodiment of the common heritage of mankind and that the proposal would not only be inconsistent with the Convention but give a disproportionate representation to some countries."

9. In connection with the consideration of the hard-core issues the Informal Plenary also decided that at the end of section A of part III of the report ("Preparation of draft rules of procedure for the organs of the Authority") the following three new paragraphs should be added:

"125 bis

"In the course of the consultations held during the sessions of the Preparatory Commission on the hard-core issues, different views were espoused by delegations. These are to be found in the different Statements of the Chairman of the Preparatory Commission on the work of the sessions during which they were discussed.

"125 ter

"It was felt that, notwithstanding the exhaustive discussions held on the hard-core issues, no solutions could be reached on these issues at this stage, until the practical difficulties of Part XI were to be addressed.

"125 quater

"The Chairman of the Preparatory Commission summed up the discussion on these hard-core issues by stating that further consideration would be given to them at an appropriate time. An exhaustive list of these issues is annexed to the present report as pending issues."

10. It was pointed out during the discussion of paragraph 69 of the draft provisional final report that the present text of this paragraph did not adequately reflect the outcome of the consideration of a proposal introduced by the European Economic Community (EEC) concerning participation in decision-making of an international organization. Therefore, the Informal Plenary decided that the present text of the paragraph should be replaced by the following text:

"The proposal mentioned in the preceding paragraph was extensively discussed. No solution was reached on it. It is recommended that further consideration be given to it by the Assembly of the Authority at an appropriate time."

11. In connection with the consideration of paragraphs 68 and 69 of the report, the Informal Plenary also agreed to delete the asterisk in rule 68 ("Voting rights") of the Final Draft Rules of Procedure of the Assembly of the Authority.

12. The Informal Plenary further agreed to introduce the following changes in the text of this part of the report:

(a) At the end of paragraph 62 "annex X to the present report" should be replaced by "the annex to the present report";

(b) In paragraph 65, line 1 should read: "With regard to rule 1 on the regular sessions of the Assembly, it was approved on the understanding that ...";

(c) In paragraph 76 a reference to the Finance Committee should be added;

(d) In paragraphs 63, 72, 78, 85, 114, 127, 132, 136 and 140, references to annexes should be replaced by references to the texts of the respective documents contained in addendum 3 to the report (LOS/PCN/WP.52/Add.3).

III. IMPLEMENTATION OF RESOLUTION II

13. In accordance with paragraph 5 of the fulfilment of obligations by the registered pioneer investors and their certifying States (LOS/PCN/L.87, annex), the certifying State, France (on behalf of IFREMER/AFERNOD)), India, Japan (on behalf of Deep Ocean Resources Development Co., Ltd. (DORD)) and the Russian Federation (on behalf of Yuzhmorgeologiya) submitted periodic reports to the Preparatory Commission. These reports are contained respectively in documents LOS/PCN/BUR/R.22, LOS/PCN/BUR/R.24, LOS/PCN/BUR/R.23 and LOS/PCN/BUR/R.25. In accordance with paragraph 5 of the understanding on the fulfilment of

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obligations by the registered pioneer investor, COMRA and its certifying State (LOS/PCN/L.102, annex), the People's Republic of China, submitted a periodic report on the activities of COMRA (LOS/PCN/BUR/R.20). Certain delegations suggested that in the future such reports should contain as much detailed information as possible, including information on periodic expenditures and the progress made in pioneer activities. It was recognized that it was difficult at the current stage to provide annual amounts of expenditure, which in any case would constitute imperfect parameters for assessing the effort made by the registered pioneer investors. The General Committee, having considered the reports of the certifying States, took note of them.

14. The General Committee considered the letter dated 25 March 1993 from the Coordinator of the Group of registered pioneer investors on behalf of France, Japan and the Russian Federation addressed to the Chairman of the Preparatory Commission (LOS/PCN/128). The General Committee noted the statement of the authors of the letters that account should be taken of the principle of equal treatment and of the principle of non-discrimination in the implementation of the obligations of the registered pioneer investors, as reflected in the relevant documents of the Preparatory Commission. The Chairman noted that further consideration would be given to the matter by the General Committee at its next meeting and that in this respect it would give a formal decision at that time.

IV. THE TRAINING PANEL

15. The General Committee considered the report of the Training Panel. The Training Panel held eight meetings during the first week of the current session to, inter alia, select six candidates for the traineeships under the training programmes offered by India and the Russian Federation, to consider the training programme of China and that of the Interoceanmetal Joint Organization and its certifying States and to consider the training programme submitted by Germany.

16. The training programmes of China and the Interoceanmetal Joint Organization and its certifying States were approved by the Panel following the introduction of certain modifications. Those revised programmes are contained in documents LOS/PCN/TP/1993/CRP.13/Rev.1 and LOS/PCN/TP/CRP.12/Rev.1, respectively. The draft note verbale (LOS/PCN/BUR/R.27) announcing those programmes was also approved by the Panel.

17. The Panel selected five candidates for the traineeships under the training programmes offered by India and the Russian Federation, i.e., two candidates from two African countries, one candidate from one country from the Latin American and the Caribbean region, and two candidates from one Asian country. The names of the candidates selected and recommended for designation by the Preparatory Commission in respect of the traineeships under the training programmes of India and the Russian Federation are contained in document LOS/PCN/BUR/R.26. In the absence of a qualified candidate in chemical engineering offered under the training programme of India, it was decided to defer that traineeship and to announce it in a new note verbale. The draft note verbale which was approved by the Panel is contained in document LOS/PCN/BUR/R.28.

18. With regard to the training programme submitted by Germany (LOS/PCN/TP/1993/CRP.15), the Panel was of the view that further details were required on the type of training to be offered and the disciplines involved. It requested that the programme be revised to conform to the format of the programmes which had already been adopted.

19. The Panel took note of a report submitted by France on the implementation of the French training programme (LOS/PCN/TP/1993/CRP.16).

20. On 31 March 1993, the General Committee considered the report of the fourth meeting of the Training Panel (LOS/PCN/BUR/R.29) and took note of it. It approved the recommendation and designated five candidates selected by the Panel for the traineeships under the training programmes offered by India and the Russian Federation. The General Committee also took note of the note verbale on the traineeships offered under the training programmes of China and the Interoceanmetal Joint Organization and its certifying States, and the note verbale on the traineeship in chemical engineering offered under the training programme of India.

21. The Chairman will consult by telephone or facsimile with the delegations concerned in order to enable the Training Panel to meet at an appropriate time.

22. The General Committee reaffirmed its decision to invite any State member or observer in the Preparatory Commission to submit candidates for the training programme. In the process of selection of trainees, however, the Training Panel should give priority to candidates presented by States members of the Preparatory Commission.

V. FUTURE WORK OF THE PREPARATORY COMMISSION

23. The Preparatory Commission decided, in the light of the recommendation of the General Committee, on the following future programme of its work:

(a) Not to hold any more meetings in the course of this year;

(b) To make provision every year for the United Nations servicing of a two-week annual session of the Preparatory Commission, until the entry into force of the Convention;

(c) The need for the effective holding of the annual session of the Preparatory Commission will be decided by the Chairman of the Preparatory Commission in consultation with the Chairmen of the Special Commissions, the Chairmen of regional groups and interest groups. The Chairman of the Preparatory Commission will also decide, on the basis of such consultations, the precise date for such a meeting;

(d) The General Committee, acting on behalf of the Preparatory Commission as its executive organ for the implementation of resolution II, will meet for two or three days annually to consider matters related to the implementation of resolution II and to continue the monitoring of the implementation of the obligations of the registered pioneer investors.

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24. As far as possible, efforts should be made to have the meetings of the General Committee and of the Training Panel coincide with the annual meeting of the Preparatory Commission.

VI. CONSIDERATION OF THE DRAFT PROVISIONAL FINAL REPORTS OF THE PREPARATORY COMMISSION

25. The Plenary of the Preparatory Commission received the statements of the Chairmen of the Special Commissions on the consideration of the respective draft provisional final reports that are relevant to their mandates. The Chairman of the Preparatory Commission introduced his statement on the work of the Informal Plenary on its draft provisional final report.

26. Having thus considered these statements, the Preparatory Commission decided to take note of them.

27. The Preparatory Commission decided to take note of the draft provisional final reports, as amended.

28. A revised version of these reports incorporating the amendments made thereon during this session will be prepared by the Secretariat and will be issued, at the appropriate time, as a consolidated provisional final report of the Preparatory Commission.

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New York, 1-12 August 1994

STATEMENT BY THE CHAIRMAN OF THE PREPARATORY COMMISSION

1. During this session, the plenary dealt with the following matters:

I. Organization of work;

II. Implementation of resolution II:

A. Relinquishment of pioneer areas (resolution II, para. 1 (e));

B. Periodic reports;

C. Compliance with paragraph 8 of the Understanding on the fulfilment of obligations by the registered pioneer investor, Interoceanmetal Joint Organization (IOM), and its certifying States;

D. Periodic expenditures;

E. Waiver of the annual fixed fee and the obligation of the three registered pioneer investors and of their certifying States to carry out stage I of the exploration work;

F. Consideration of the report of the Group of Technical Experts to the General Committee on the application of the Government of the Republic of Korea for registration as a pioneer investor (LOS/PCN/BUR/R.40);

G. Certificate of compliance;

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III. Matters arising from the imminent entry into force of the Convention:

A. Consideration of the provisional agenda for the first session of the Assembly and of the Council of the Authority and, as appropriate, of recommendations relating to items thereon (LOS/PCN/139 and LOS/PCN/140);

B. Final report of the Training Panel;

C. Consideration of the budget for the first financial period of the International Seabed Authority (LOS/PCN/141);

D. Date of the first session of the Assembly of the Authority;

E. Report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea;

F. Final report on all matters within the mandate of the Preparatory Commission, except as referred to in section E, to the Assembly of the International Seabed Authority at its first session.

I. ORGANIZATION OF WORK

2. On 1 August 1994, on the recommendation of the General Committee, the plenary adopted a programme of work for the present meeting of the Commission which provided for more meetings than hitherto for the General Committee acting as the executive organ for the implementation of resolution II. Provision was also made for formal sessions of the plenary to deal with matters arising from the imminent entry into force of the Convention. Arrangements were made for the Training Panel to meet simultaneously with the Preparatory Commission during the first week of the meeting of the Preparatory Commission.

II. IMPLEMENTATION OF RESOLUTION II

A. Relinquishment of pioneer areas (resolution II, para. 1 (e))

3. On 8 August 1994, the General Committee took up the question of relinquishment of pioneer areas.

4. In accordance with the provisions on relinquishment in resolution II, paragraph 1 (e), the delegation of India notified the General Committee, on behalf of the Government of India, that 20 per cent of the pioneer area (30,000 square kilometres) had been relinquished. The area relinquished was that bounded by the lines joining the turning points and the geographical coordinates indicated in the schedule annexed to document LOS/PCN/SUR/R.44.

5. The delegation of Poland, on behalf of the registered pioneer investor, IOM, and its certifying States, notified the General Committee that, in accordance with the schedule established in resolution II, paragraph 1 (e) (i), IOM had relinquished 20 per cent of the pioneer area that was situated in the southern part of the pioneer area and adjoined the area reserved for the Authority. The relinquished area measured 30,672 square kilometres, or 20.45 per cent of the pioneer area (LOS/PCN/BUR/R.45).

6. The General Committee took note of the notification of relinquishment of pioneer areas by the registered pioneer investors, the Government of India and IOM.

7. The General Committee recommended to the International Seabed Authority that the Council should continue monitoring the relinquishment of areas by the registered pioneer investors.

8. At the twelfth session of the Preparatory Commission, held at Kingston from 7 to 11 February 1994, China had reported the sinking of its research vessel R/V Xiangyanghong 16. As a consequence China had to postpone its arrangements to comply with the prescribed schedule for the relinquishment of areas (LOS/PCN/L.114/Rev.1, para. 14). China reiterated its intention to relinquish 30 per cent of the allocated area at the end of the fifth year in accordance with resolution II, paragraph 1 (e).

B. Periodic reports

9. In accordance with paragraph 5 of the fulfilment of obligations (LOS/PCN/L.87, annex), the delegation of the Russian Federation submitted to the General Committee a periodic report on the activities of the registered pioneer investor, Yuzhmorgeologiya, covering the period from 1 January 1993 to 1 August 1994 (LOS/PCN/BUR/R.43).

10. The General Committee took note of the report.

C. Compliance with paragraph 8 of the Understanding on the fulfilment of obligations by the registered pioneer investor, Interoceanmetal Joint Organization, and its certifying States

11. In accordance with paragraph 8 of the understanding on the fulfilment of obligations by the registered pioneer investor IOM and its certifying States (LOS/PCN/L.108, annex), on the basis of the available data collected by it in the area reserved for the Authority, IOM shall provide free of cost to the Preparatory Commission:

"Computerized database disks for samples, including:

"(i) The establishment of comprehensive computerized database disks for samples stations;

"(ii) Data on station number, coordinates, depth, abundance, metal content, device and information on the source of the data; allowing the raw data to be statistically manipulated and presented on various types of maps and graphs."

12. In accordance with that paragraph, the delegation of Poland, on behalf of IOM, informed the General Committee that a preliminary report containing the required data had been submitt d to the Secretary-General (LOS/PCN/BUR/R.46).

13. During the consideration of that matter, it was pointed out that members of the General Committee ought to have been provided with more information regarding the report. Further information was provided in document LOS/PCN/BUR/R.49. The General Committee took note of the report.

D. Periodic expenditures

14. Questions were raised regarding the periodic expenditures referred to in document LOS/PCN/L.87, annex, paragraph 4; document LOS/PCN/L.102, annex, paragraph 4; and document LOS/PCN/L.108, annex, paragraph 4. Under those paragraphs the periodic expenditures to be incurred in respect of the development of the respective pioneer areas were to be determined by the Preparatory Commission in consultation with and with the cooperation of each registered pioneer investor within 12 months of the adoption of the understanding.

15. It was noted that the Preparatory Commission had not determined amounts of periodic expenditures. The Commission had recognized that it was difficult at that stage to provide annual accounts of expenditures (LOS/PCN/L.113/Rev.1, para. 13).

E. Waiver of the annual fixed fee and the obligation of the three registered pioneer investors and of their certifying States to carry out stage I of the exploration work

16. The General Committee considered the issues relating to the waiver of the annual fixed fee payable under annex III, article 13, paragraph 3, in the light of the conclusions of the Group of Technical Experts contained in paragraph 57 of its report (LOS/PCN/BUR/R.32) and the decision of the Preparatory Commission embodied in document LOS/PCN/L.87, annex, paragraph 12, and decided to recommend to the Authority that the annual fixed fee payable by the registered pioneer investors upon entry into force of the Convention should be waived in a manner consistent with section 8, paragraph 2, of the annex to the Agreement on the Implementation of Part XI of the United Nations Convention on the Law the Sea of 10 December 1982.

17. The General Committee also decided to waive the annual fixed fee of US$ 1 million provided for in resolution II, paragraph 7 (b), as of the date of registration and also referred to in document LOS/PCN/L.87, annex, paragraph 10. Notwithstanding the foregoing, the General Committee considered the obligation

of the three registered pioneer investors, Institut Français de Recherche pour l'Exploitation de la Mer (IFREMER/AFERNOD), Deep Ocean Resources Development Co. Ltd. (DORD), Yuzhmorgeologiya, and of their certifying States, France, Japan and the Russian Federation, to carry out stage I of the exploration work referred to in document LOS/PCN/L.87, annex, paragraphs 7 and 8. It decided, without prejudice to the understanding on stage II contained in document LOS/PCN/L.87, annex, paragraph 9, that the performance of the obligation should be deferred until the Legal and Technical Commission determined that substantial exploration work was being carried out by any contractor, unless the Council decided, at the request of any registered pioneer investor, to make adjustments in accordance with paragraph 40 (a) of document LOS/PCN/L.87 and section I, paragraph 6 (a) (iii), of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

F. Consideration of the report of the Group of Technical Experts to the General Committee on the application of the Government of the Republic of Korea for registration as a pioneer investor (LOS/PCN/BUR/R.40)

18. On 2 August 1994, the General Committee registered the Government of the Republic of Korea as a pioneer investor.

19. On 12 August 1994, the General Committee adopted an understanding on the fulfilment of obligations by the registered pioneer investor, the Government of the Republic of Korea, and its certifying State, the Republic of Korea. That understanding is annexed to the present report. It was noted that the insertion of a provision on relinquishment of areas in this understanding did not mean that any additional obligations were imposed on the registered pioneer investor, the Government of the Republic of Korea, as compared with other registered pioneer investors.

G. Certificate of compliance

20. The General Committee agreed that, in accordance with resolution II, paragraph 11, each registered pioneer investor shall be provided with a certificate of compliance. Each certificate shall read as follows:

> "The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea hereby certifies that ... has complied with the obligations under resolution II and the related understandings and decisions of the Preparatory Commission to the extent indicated in the relevant parts of the annexed report."

21. There will be annexed to each certificate a revised version of the report on the status of the implementation of the obligations of the registered pioneer investors under resolution II and the related understandings (LOS/PCN/BUR/INF/R.12), supplemented by documents LOS/PCN/BUR/R.43, LOS/PCN/BUR/R.44, LOS/PCN/BUR/R.45 and LOS/PCN/BUR/R.46 and other relevant documents. This document will be issued under the symbol LOS/PCN/144.

III. MATTERS ARISING FROM THE IMMINENT ENTRY INTO FORCE OF THE CONVENTION

A. Consideration of the provisional agenda for the first session of the Assembly and of the Council of the Authority and, as appropriate, of recommendations relating to items thereon (LOS/PCN/139 and LOS/PCN/140)

22. At its 80th meeting, on 1 August 1994, the plenary considered the provisional agenda for the first session of the Assembly (LOS/PCN/139), and the provisional agenda of the Council (LOS/PCN/140).

1. Provisional agenda of the first session of the Assembly

23. The provisional agenda for the first session of the International Seabed Authority as contained in document LOS/PCN/139 was discussed paragraph by paragraph and the plenary agreed on the following provisional agenda:

1. Opening of the session by the temporary Chairman.

2. Adoption of the rules of procedure.

3. Election of the President.

4. Adoption of the agenda.

5. Election of the Vice-Presidents.

6. Matters relating to the election of the members of the Council for the International Seabed Authority.

7. Election of the members of the Council.

8. Election of the members of the Finance Committee.

9. Appointment of the Credentials Committee.

10. Presentation of the final report of the Preparatory Commission.

11. Discussion on those sections of the final report on matters relating to the Authority that the Assembly may decide to consider, including the draft Agreement between the International Seabed Authority and the Government of Jamaica regarding the Headquarters of the International Seabed Authority; the draft Protocol on Privileges and Immunities of the International Seabed Authority; and the Draft Agreement concerning the relationship between the United Nations and the International Seabed Authority.

12. Appointment of the Secretary-General of the Authority, as soon as the list of candidates for the election of the Secretary-General is proposed to the Assembly by the Council.

13. Consideration of the following:

(a) Follow-up of the decisions taken by the Preparatory Commission on the implementation of resolution II;

(b) Transfer of the property and records of the Preparatory Commission to the Authority;

(c) Provisional budget and financial organization;

(d) Follow-up of the training programme;

(e) Organization of the secretariat.

14. Date of the second session of the Assembly.

15. Other matters.

24. During those discussions it was pointed out that with respect to item 13 (c), provisional budget and financial organization, account must be taken of section 2, paragraph 14, of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 which provided for an interim period when the Authority would be funded by the United Nations. Thus, the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee would necessarily have a role to play with regard to the funding of the Authority in the initial period.

2. Provisional agenda of the first session of the Council

25. After an examination of the provisional agenda for the Council contained in document LOS/PCN/140, the Plenary agreed upon the following provisional agenda:

1. Opening of the session by the temporary Chairman.

2. Adoption of the rules of procedure.

3. Election of the President.

4. Election of the Vice-Presidents.

5. Adoption of the agenda.

6. Election of the members of the Finance Committee.

7. Drawing up of a list of candidates to be proposed to the Assembly for the election of the Secretary-General of the Authority.

8. Consideration of the following:

(a) Follow-up of the decisions taken by the Preparatory Commission on the implementation of resolution II;

(b) Follow-up of the training programme;

(c) Organization of the secretariat;

(d) Provisional budget and financial organization;

(e) The draft Agreement concerning the relationship between the United Nations and the International Seabed Authority.

9. Consideration, with a view to adoption, of the rules, regulations and procedures necessary for the conduct of activities in the Area as they progress and of rules, regulations and procedures incorporating applicable standards for the protection and preservation of the marine environment.

10. Consideration of applications for approval of plans of work.

11. Other matters.

26. The plenary recognized that the first part of the first session of the Assembly would be of a purely ceremonial nature and would deal with item 1 of the provisional agenda of the first session of the Assembly and general statements. Further substantive items would be taken up in the resumed first session. The plenary also noted that the session could be used for informal consultations on items of the provisional agenda relating to elections.

B. Final report of the Training Panel

27. The Training Panel held its sixth and last session on 1, 2 and 5 August 1994. The report of the sixth session and the final report of the Training Panel to the General Committee are contained in documents LOS/PCN/BUR/R.47 and R.48, respectively.

28. Following an evaluation of the training received by Mr. Kohpina, Mr. Hwang and Mr. Mohammad-Taheri under the training programme of Japan, and the training received by Mr. Braham under the training programme of France, the Panel established, on the basis of the reports presented, that the training had been carried out in accordance with the programmes that had been approved by the Panel and therefore recommended to the Preparatory Commission the issuance of training certificates to those four trainees.

29. The Panel took note of the reports presented by the Russian Federation and India on the successful completion of the traineeships by the two trainees who had received training under the training programme of the Russian Federation, and by two of the three trainees who had received training under the training programme of India. It decided that in the absence of the reports by the trainees on the training they had received in the Russian Federation, and the report of the Department of Ocean Development on the trainees who had received

training in India, it could not proceed with an evaluation of the training received under the training programmes of the Russian Federation and India. The Panel was informed that the third trainee who had been selected for the training programme of India would commence his training in October 1994. The Panel also took note of the reports presented by France and China on the trainees who were currently undergoing training. The Panel was informed that the four trainees selected for the ICM training programme would commence their training on 28 October 1994.

30. The Panel received information on the training programme of the International Ocean Institute. It also received an offer of training by the Intergovernmental Oceanographic Commission.

31. The Training Panel adopted its final report to the General Committee on 5 August 1994.

32. In presenting the reports of the Panel to the meeting of the General Committee, on 9 August 1994, the Chairman of the Panel stated that in addition to the recommendations contained in chapter III of the final report, and in accordance with the principles, policies, guidelines and procedures for a Preparatory Commission Training Programme (LOS/PCN/SCN.2/L.6/Rev.1), the Panel also recommended that in the selection of staff for the Authority, priority should be given to the trainees who had completed their training.

33. The General Committee considered and took note of the report of the sixth session of the Panel. It endorsed the recommendation of the Panel that the Preparatory Commission issue training certificates to Mr. Kohpina, Mr. Hwang, Mr. Mohammad-Taheri and Mr. Braham.

34. The General Committee also considered and took note of the final report of the Panel. It decided to entrust to the Council the question of the follow-up of the training programmes, in particular the issues which the Panel had identified as outstanding and the recommendations it had made thereon.

c. Consideration of the budget for the first financial period of the International Seabed Authority (LOS/PCN/141)

35. The Preparatory Commission decided to recommend to the General Assembly that it approve the draft budget for the International Seabed Authority only for the period 1994-1995 as contained in LOS/PCN/143. In doing so the Preparatory Commission noted that the draft budget was premised on the assumption that the activities of the Authority in 1994-1995 would relate in large measure to the establishment and internal administration of the Authority. The Preparatory Commission noted that, in the preparation of a draft budget for 1996, the Secretary-General of the Authority would need to consider the substantive functions of the Authority in relation to the anticipated level of activities in the Area.

36. The Russian Federation noted that the draft budget of the Authority for the years 1994-1995 did not reflect the principle of cost effectiveness as specified

in the Agreement relating to the Implementation of Part XI of the Convention. Accordingly, it reserved its position with respect to the draft budget.

37. Jamaica stated that the above decisions of the Preparatory Commission was predicated on the assumption that the activities of the Authority from November 1994 to December 1995 would be concerned with its internal administration. From 1996 the Authority would need to consider its substantive activities as the functions of the Authority required.

D. Date of the first session of the Assembly of the Authority

38. The first part of the first session of the Assembly of the Authority will be held from 16 to 18 November 1994; the second part will be held from 27 February to 17 March 1995; and the third part will be held from 7 to 18 August 1995.

E. Report containing recommendations for submission to the meeting of the States Parties to be convened in accordance with annex VI, article 4, of the Convention regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea

39. The Preparatory Commission decided that the report to the States Parties would comprise:

(a) The main report in chapter V, pages 100-114, of document LOS/PCN/130, which will be excised from that document;

(b) Addenda to that report, contained in the addenda to document LOS/PCN/SCN.4/WP.16;

(c) The background documentation of Special Commission 4, annexed to the report; those documents are listed in document LOS/PCN/130/Add.1, volume VI, parts one to four;

(d) Draft budget for the first financial period of the International Tribunal for the Law of the Sea (LOS/PCN/142).

40. The draft budget for the first financial period of the International Tribunal for the Law of the Sea was not considered by the Preparatory Commission owing to constraints of time. It was decided that it should be considered at the meeting of the States Parties.

41. The Preparatory Commission also decided to transmit the recommendations approved at the current meeting (contained in para. 43 below) to the meeting of the States Parties.

42. The Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea took note of General Assembly resolution 48/263 of 28 July 1994 and the opening for signature of the Agreement

relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

43. Bearing in mind the desire to achieve universal participation in the Convention and the provisions of annex VI, articles 2 and 3, the Preparatory Commission recommended to the States Parties the following procedural arrangements for the organization of the Tribunal:

(a) An ad hoc meeting of the States Parties to the Convention should be convened as soon as possible after the date of its entry into force and in any case before the end of 1994 in order to discuss the organization of the Tribunal. The Preparatory Commission requested the Secretary-General of the United Nations, as the depositary of the Convention, to convene the meeting;

(b) The States Parties should, at that meeting, consider the possibility of a one-time deferment of the first election of the members of the Tribunal of a length to be decided by them;

(c) In the event of a deferment, the meeting of the States Parties should request the Secretary-General of the United Nations to address written invitations to the States Parties to submit their nominations for members of the Tribunal (annex VI, article 4 (2)) at least three months before the date fixed by the ad hoc meeting of States Parties for the first election;

(d) The Secretary-General should be requested to designate a United Nations staff member as Acting Registrar of the Tribunal before 16 May 1995, charged with making preparations of a practical nature for the organization of the Tribunal, including the establishment of a library;

(e) States should continue consultations on the organization of the Tribunal.

F. Final report on all matters within the mandate of the Preparatory Commission, except as referred to in section E above, to the Assembly of the International Seabed Authority at its first session

44. Under resolution I, paragraph 11, the Preparatory Commission has to prepare a final report on all matters within its mandate, except as provided in paragraph 10 of that resolution, to the Assembly at its first session. The Preparatory Commission has already adopted its provisional final report. The Preparatory Commission decided to consider as its final report the provisional final report on all matters within its mandate, except as provided in paragraph 10 of resolution I, supplemented by any further reports and recommendations which the Preparatory Commission has adopted.

45. The delegation of the Russian Federation repeated its reservations already made on the matter and expressed its regrets that a number of issues remained unresolved.

46. The Preparatory Commission took note of the request contained in paragraph 13 of General Assembly resolution 48/263 and decided, in the light of the fact that it had had insufficient time to revise the contents of its provisional final report, to recommend to the Authority that it should take into account the terms of the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 in the consideration of the recommendations and the report of the Preparatory Commission in order to ensure consistency as necessary.

ANNEX

Understanding on the fulfilment of obligations by the registered pioneer investor, the Government of the Republic of Korea, and its certifying State, the Republic of Korea

1. This understanding applies to the registered pioneer investor, the Government of the Republic of Korea, and its certifying State, the Republic of Korea.

2. The pioneer investor shall provide training pursuant to resolution II, paragraph 12 (a) (ii), in conformity with the specific programme for training approved by the Preparatory Commission in accordance with the principles, policies, guidelines and procedures contained in documents LOS/PCN/SCN.2/L.6/Rev.1 and LOS/PCN/SCN.2/L.7, taking into account the report contained in document LOS/PCN/BUR/R.6. It is agreed that the cost of such training shall be borne by the registered pioneer investor and shall be free of cost to the Preparatory Commission. The precise number of trainees, the duration and the fields of training shall be agreed upon between the Preparatory Commission and the registered pioneer investor according to its capabilities. It is further agreed that the first group of trainees shall consist of no less than four individuals.

3. In accordance with resolution II, paragraph 12 (a) (iii), the registered pioneer investor undertakes to perform the obligations prescribed in the United Nations Convention on the Law of the Sea and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the transfer of technology, and further agrees that training in the use of all available technology shall constitute a substantial component of the training programme referred to in paragraph 2.

4. The periodic expenditures for exploration to be incurred in accordance with resolution II, paragraph 7 (c), by the registered pioneer investor in respect of the development of the pioneer area shall be determined by the Preparatory Commission in consultation with and with the cooperation of the registered pioneer investor within 12 months of the adoption of this understanding. Such expenditures shall be reviewed by the Preparatory Commission from time to time in consultation with and with the cooperation of the registered pioneer investor.

5. The certifying State agrees to provide, in accordance with resolution II, paragraph 12 (b) (ii), periodic reports to the Commission on the pioneer activities as defined in resolution II, paragraph 1 (b), carried out by it, by its entities or natural or juridical persons in its pioneer area. Such reports shall be provided annually.

6. The registered pioneer investor, the Government of the Republic of Korea, will undertake, if so requested by the Preparatory Commission, a programme of exploration in accordance with the provisions of resolution II, paragraph 12 (a) (i), of one mine site for the Enterprise in the area designated as the reserved area for the conduct of activities by the Authority.

7. The registered pioneer investor, the Government of the Republic of Korea, on the basis of the available data collected by it in the area reserved for the Authority, shall provide free of cost to the Preparatory Commission:

Computerized database disks for samples, including:

(i) The establishment of comprehensive computerized database disks for sample stations;

(ii) Data on station number, coordinates, depth, abundance, metal content, device and information on the source of the data; allowing the raw data to be statistically manipulated and presented on various types of maps and graphs.

8. The obligation of the registered pioneer investor, the Government of the Republic of Korea, under the provisions of resolution II, paragraph 7 (b), shall be waived as of the date of the registration.

9. The annual fixed fee payable by the registered pioneer investor upon entry into force of the Convention should be waived in a manner consistent with section 8, paragraph 2, of the Annex to the Agreement on the Implementation of Part XI of the United Nations on the Law of the Sea of 10 December 1982.

10. This fee shall be payable from the date of commencement of commercial production. This fee may be credited against other payments due under the system adopted in accordance with paragraph 1 (d) of section 8 of the annex to the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The amount of the fee shall be established by the Council.

11. The registered pioneer investor, the Government of the Republic of Korea, shall relinquish portions of the pioneer area to revert to the Area, in accordance with the schedule set out in resolution II, paragraph 1 (e).

12. Taking into account paragraph 19 (e) of the statement on the implementation of resolution II (LOS/PCN/L.41/Rev.1, annex), paragraph 17 of document LOS/PCN/L.87, annex, paragraph 11 of document LOS/PCN/L.102, annex, paragraph 11 of document LOS/PCN/L.108, annex, and the present understanding, as well as the relevant characteristics and merits of each application, the Preparatory Commission or the Authority shall enter into arrangements similar to those contained in the above understandings with any other registered pioneer investor.

13. Owing to the constraints of time the implementation of this understanding and the monitoring of compliance by the registered pioneer investor, the Government of the Republic of Korea, and the certifying State, the Republic of Korea, with its obligations under resolution II and this understanding shall be carried out by the Authority.

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New York, 1-12 August 1994

STATEMENT BY THE CHAIRMAN OF THE PREPARATORY COMMISSION

Corrigendum

1. Page 5, paragraph 21, last line

For LOS/PCN/144 read LOS/PCN/145

2. Page 11

(a) After paragraph 43, insert

44. During the closing meeting of this session of the Preparatory Commission, the representative of Fiji, speaking on behalf of the States that had ratified or acceded to the 1982 United Nations Convention on the Law of the Sea, noted that this group of States had played a very constructive and statesmanlike role in facilitating the resolution of outstanding issues relating to Part XI.

45. He also stated that, with respect to the deferment of the first election of the members of the International Tribunal for the Law of the Sea, the group of States that had ratified or acceded to the Convention had requested him to make the following statement:

"(i) That the prerogative to take a decision on this matter of deferment of the election rests with those who will be States parties to the Convention after 16 November 1994;

"(ii) That any postponement that is agreed to must be a one-time-only postponement of the first election for the membership of the Tribunal;

"(iii) That while we have not yet agreed on a recommendation on the period of deferment, it must not, however, exceed a reasonable period. The group will not entertain a long delay."

46. The Preparatory Commission took note of the above statement.

(b) Renumber the subsequent paragraphs accordingly.